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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Note verbale dated 9 March 2001 from the Permanent Mission of Myanmar to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights

The Permanent Mission of the Union of Myanmar to the United Nations Office and other international organizations in Geneva presents its compliments to the secretariat of the fifty-seventh session of the Commission on Human Rights and has the honour to enclose herewith a copy of a memorandum concerning the situation of human rights in Myanmar.

The Permanent Mission would be grateful if the aforementioned document* could be circulated as an official document of the fifty-seventh session of the Commission on Human Rights under agenda item 9 in all United Nations official languages.

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* Reproduced as received, in English only.

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Annex

Myanmar today in a nutshell

A good understanding of 5 fundamental phenomena --- 3 specific characteristics, a vision and one political process in Myanmar --- is essential to a full and proper appreciation of the current situation in Myanmar.

The first characteristic specific to Myanmar *is that Myanmar is a multi-racial society with 135 national races.*

The second specific characteristic *is its strategic geopolitical position, forming a link between South Asia and South-East Asia and situated alongside the biggest and most powerful Asian neighbouring countries.*

The third specific characteristic *is that the problem of insurgency and that of maintaining peace and tranquillity have bedevilled the country since its independence in 1948 until recently.*

A vision *shared by all the Myanmar people is to establish a modern, peaceful and developed democratic state.*

The most important current political process, *taking place in Myanmar, is the constitution-making process through the National Convention that will lead to the emergence of a strong and enduring state constitution and the subsequent election of a democratic government in accordance with the new constitution.*

Because of these characteristics specific to Myanmar, the following are the foremost national tasks,

- ***to safeguard and consolidate unity and solidarity among the national races;***
- ***to maintain peace and tranquillity throughout the country;***
- ***to safeguard non-disintegration of the Union and sovereignty and to pursue an independent and active foreign policy.***

The concrete achievements, accomplished by the State Peace and Development Council since its advent in 1988, include, among other things,

- ***the prevalence of peace and tranquillity throughout the country;***
- ***an unprecedented degree of national unity and reconsolidation;***
  17 armed groups except one faction, have returned to the legal fold and joined hands with the Government. Only one faction of the KNU remains outside the legal fold.
- ***the significant economic progress, and the social and cultural uplift and the improvement of the living standards of the people;***
  Myanmar's economy has registered a healthy average growth rate of around 6.6 percent in current five-year plan for 1996-1997 to 2000-2001.
- ***the infrastructure-building on an unprecedented scale throughout the whole country;***
  The Government has completed to-date 170 bridges including 5 Ayeyarwady River-crossing bridges, 114 dams, 43 hospitals, 79 dispensaries, 35959 primary schools, 2112 secondary schools, 953 high schools and 3844 miles of road, to mention just a few statistics and also ***the border area development on an unprecedented scale*** *for national races living in frontier areas.*

Inspired by the aforementioned vision, the Myanmar Government and the people are laying down a firm foundation to establish a modern, peaceful and developed democratic state through the process of the National Convention. They are also striving with verve and vigour to develop the country and to improve the well-being and political, economic and social life of the entire nation. In so doing, they are, indeed, most effectively protecting and promoting fundamental human rights and advancing the right to development.

The following memorandum offers a fairly comprehensive and yet concise overview of the positive developments in Myanmar.

The present memorandum has been prepared for the ready reference of the Members of the Commission on Human Rights and observer delegations in order to enable them to better understand the real situation prevailing in the Union of Myanmar.

It is hoped that the participants of the 57th Session of the Commission on Human Rights will take into account these specific characteristics of Myanmar and the positive developments in the country and will view this question from a more objective and balanced perspective.

Introduction

The 56th Session of the Commission on Human Rights adopted on 18 April 2000, resolution 2000/23 on the situation of human rights in Myanmar. Resolution 2000/23 decided to continue its consideration of the situation of human rights in Myanmar at the 57th session of the Commission on Human Rights. The resolution, inter alia, urged the Government of the Union of Myanmar to take certain measures in some areas of concern to the international community. Following the adoption of the draft resolution, the Permanent Representative of the Union of Myanmar H.E. U Mya Than contended that the draft resolution is thoroughly flawed because of its politicized nature and is aimed at belittling and downgrading the concrete achievements of the Myanmar Government. The draft resolution drew strong objections not only from the delegation of Myanmar but also from the delegations of many countries from Asia and the Pacific, as it is politically motivated and prejudges the question of the so-called "forced labour" in Myanmar. The practice of forced labour is non-existent in the country, and has been effectively prohibited by culture, by practice and by law.

As such, Myanmar is resolute and steadfast in her total rejection of the draft resolution. Moreover, the draft resolution turns a blind eye to the concrete and tangible achievements accomplished by the State Peace and Development Council such as prevalence of peace and tranquillity in the country, national unity and reconsolidation, significant economic progress and unprecedented scale of infrastructure-building and border areas development.

The draft resolution also makes a sweeping conclusion that the National Convention is not in a position to further the restoration of democracy and national reconciliation, turning a blind eye to the fact that the National Convention has completed 15 chapters and 104 fundamental principles to be incorporated in the new State Constitution.

Myanmar is of the view that the draft resolution is factually incorrect, politically motivated and aimed at tarnishing the image of the country, and is used as a political instrument to exert pressure on the Government. For these reasons, the Myanmar delegation was compelled to completely dissociate itself from the draft resolution. This, however, does not alter Myanmar's consistent policy of cooperating with the United Nations to the fullest extent possible. It also continues to demonstrate its sensitivity to and the understanding of the concern of the international community.

During the period under review by the 57th session of the Commission on Human Rights, Myanmar has indeed, witnessed a number of significant positive developments which are outlined below for favour of careful consideration by the member or observer delegations.

Efforts for the prevalence of peace and stability

Peace and development are inseparable and mutually reinforcing. Development is not achievable in any country without first establishing peace.

Drawing lessons from the post-independence history of the country replete with the armed insurrections of the ethnic groups, resulting primarily from the divide-and-rule policy of the British colonial administration during the colonial era, the Government strongly believes that lasting peace can be achieved only through the strengthening of the unity among the national races. This belief led the Government to undertake energetic efforts to establish peace with the armed groups of the national races as a matter of top priority. As a result, the Government has been able to maintain peace and stability throughout the country. This is the first time in many decades that peace can be maintained for so many years on end. In the meantime, with a view to further consolidating the existing peace, the Government has launched an ambitious plan for the development of border areas and national races. The Government has spent over 20 billion Kyats on the plan.

Efforts are under way to persuade the sole remaining armed group --- one faction of the Karen National Union (KNU) --- to follow the example of other groups and return to the legal fold. This faction of the KNU is at present, still engaged in a futile armed struggle against the Government and still remains intransigent to the overtures for peace.

The KNU which was declared illegal in 1949, has undergone many changes both in its leadership and political programme. Currently, it masquerades as a democratic force and is trying to destabilize the peace and stability achieved so far in the border areas by instigating those armed groups which had already returned to the legal fold to reject the efforts of the Government and people to build a peaceful, prosperous and democratic nation.

However, the fighting strength of the remaining faction of the KNU has considerably declined since some five years ago when most of its ranks and files, who were dissatisfied with the leadership and who wanted peace, broke away from the main organization. It has lost all of its major camps in the country proper and its movements are now limited to operations in the form of small mobile units in certain areas across the border.

On the other hand, family members, sympathizers and supporters of the KNU are still based in the so-called refugee camps established across the border since the 1980s to elicit the support and sympathy of the international community. These camps are used by the KNU as a safe haven as they store their weapons there and launch attacks on the Government and the local populace of Myanmar.

It must be listed out that unfounded allegations and accusations against the Government emanate from these camps and also from the pocket areas in the frontier areas of the country where KNU remnant still hide. These allegations were quoted by those who bear ill-will against the Government as "credible sources" of news regarding Myanmar and thus deliberately misleading the world community.

However, the Government, with sincerity and patience still extends an olive branch to the remaining faction of KNU and is ready to receive them back, including those living in the so-called refugee camps. In fact, in response to the goodwill gestures of the Government , one faction of the KNU -- the Democratic Karen Buddhist Association (DKBA) -- has already returned to the legal fold. So did hundreds and hundreds of the remaining members of the KNU and they were warmly welcomed by the authorities by providing assistance. They have realized the genuine goodwill of the Government and are now participating in the regional activities. As many more are continuously coming into the legal fold, soon, the Kayin State will be a part of the development activities in the country.

Now is the time for the leader of the remaining faction of the KNU to seriously consider their main objectives for the Kayin people and to commit themselves to bring peace and prosperity to their people and to the whole nation as well. They can look at the other armed national groups who have come into the legal fold and are working together with the Government for the betterment of their respective peoples. The remaining faction of the KNU would be welcomed similarly with open arms and their aspirations to develop their own race will be realized in a peaceful manner.

Suppression of narcotic drugs

The border areas of the Union of Myanmar have lagged behind other parts of the country in development owing to inadequate infrastructure and internal insurgency problems in the past. It is in these areas that most of the country's 135 national races reside. As the terrain is rough and mountainous, most areas are hard to reach. So the local populace relied totally on poppy cultivation which, unlike other perishable produce, does not need to depend on roads for transports. Years of ignorance made them insensitive in the past to the effects that opiate drugs have on the society and mankind.

Needless to say, the poppy cultivation was introduced into the country by the colonialists as it is not indigenous to Myanmar. Opium dens were even allowed to open freely in the country despite strong objection from the people, Buddhist clergy and the American Baptist missionaries. Later, in the early 1950s, the Kumintang (KMT) troops which were forced out of the Southern Yunan Province of China by the People's Liberation Army of the People's Republic of China, took refuge and established base camps in Myanmar territory. They were encouraged, supported and financed by a western power with the aim of blocking further communist expansion in Asia. In the aftermath of the Second World War, the CIA encouraged the production of opium in the region to help finance its own activities and its KMT allies. The proceeds were also used to pay for the considerable arsenal of arms supplied to the KMT and other various groups in Myanmar . No doubt, these activities also sowed the seeds of the current drug production problems in the border areas of Myanmar. After the bulk of the KMT were flown out of Myanmar, remnants of two divisions of the KMT remained active in those areas until 1996. They encouraged not only poppy cultivation in the golden triangle area as well as on the Myanmar-Yunan (PRC) border, but were also responsible for the refining of opium into heroin and creating heroin markets in the region.

Abuse and illicit trafficking of narcotic drugs bring about crimes and undesirable activities like money laundering and deterioration of the moral characters of the population. The drug issue is a major socio-economic challenge to mankind. As it is a threat to the right of the people to enjoy a decent quality of life, the Government of the Union of Myanmar has been carrying out anti-narcotics measures as a national endeavour. In so doing, Myanmar has always contributed unstintingly to the fight against narcotic drugs. Myanmar has also made great sacrifices. 776 of her soldiers sacrificed their lives and 2350 sustained injuries from the period 1988 to 1997.

The Government regards the suppression of narcotic drugs as a national task and the top priority. It has made all-out efforts for a three pronged attacks aiming at supply reduction, demand reduction and law enforcement. As stated above, certain border areas of Myanmar have totally relied on poppy cultivation in the past. To totally change this situation, the Government has decided that it must strive for the development of border areas and national races. To this end, a Central Committee for the Development of Border Areas and National Races was formed on 25 May 1989. For more effective implementation of border areas and national races development, a separate ministry was instituted on 24 September 1992 and the Law on Development of Border Areas and the National Races was promulgated on 13 August 1993. The main purpose of the Law is the total elimination of poppy cultivation through creation of alternative economic activities for the local populace.

Myanmar has drawn up and is implementing a 15-year Narcotic Elimination Plan from 1999/2000 to 2013/2014 with its own resources. Opium cultivation decreased 30 per cent compared with the previous year. This received world recognition. The Government of Myanmar has invested 5613.569 million of Kyats and 150 million US dollars in its campaign against drug abuse. The problem of drugs is not confined to an individual, a race or a country. It is a problem of the whole human race. Myanmar will not waiver from this task and continue to combat this horrible scourge until it achieves its goal --- a drug-free nation.

Mongla area has been declared as drug-free zone on 22 April 1997 ---- the first such drug-free zone in the world. Arrangements are under way to establish other areas as drug-free zones one after another.

Accordingly, several areas have been declared opium-free zones and poppy cultivators have now turned to alternative crops and stepped-up law enforcement measures have led to increase seizures of narcotic drugs. The 1997-98 records showed that 49,000 acres of poppy plantations were destroyed by the government and the people. As crop substitution, buckwheat is being cultivated in these areas with the assistance from Japan. On the other hand, law enforcement personnel regularly seize and destroy illicit drugs and heroin refining laboratories. Members of the Diplomatic Corps and journalists are always invited to attend the large-scale destructions of narcotic drugs.

Myanmar also played host to the Fourth International Heroin Conference in Yangon in February 1999. This conference was attended by delegates from 28 countries and it contributed to enhance cooperation and understanding among nations to combat the war on drugs. While in Yangon, delegates to the Conference took part in, and witnessed the destruction of narcotic drugs in Myanmar.

One of the reasons why the authorities of Myanmar decided to accept the Conference to be held in Yangon is because Myanmar believes that with the cooperation of the international community, Myanmar's fight against narcotic drugs can and will be more effective. The Secretary General of the INTERPOL, in his message to the conference commented that *"it is high time the international community becomes acquainted with the excellent work that is being carried out in Myanmar against the illicit production and trafficking of heroin"*.

While the issue of the illicit production and trafficking in heroin is being tackled, a synthetic drug in the name of *methamphetamine* has forced its way into the regional drug scene. This drug has surfaced in Myanmar just over two years ago. Anti-narcotic officials of Myanmar are cooperating with the countries and organizations in the region that have more experience and expertise for the control of this drug.

Drug menace is a global problem, requiring a global response. Accordingly there is a growing consensus of the need for concerted efforts of the world community based on the principle of shared responsibility. As for Myanmar, she is committed to the total elimination of narcotic drugs ---- be it with or without the outside assistance. The Government and the people of the Union of Myanmar will continue to abide by this commitment with dedication and will carry out the task to the end. But for those with vested interests, it would be better for them to put politics aside and work for that common goal just for the sake of millions of people around the world whose lives are threatened and affected by this drug trade.

The elimination of narcotic drugs also facilitates the alleviation of poverty in the border areas. By working for the elimination of drugs, the populace of the border areas will also achieve at the same time better health care, education and infrastructure development and better life style. Bearing these lofty goals in mind, the Government will continue to implement the 15-year plan and will at the same time cooperate with other ASEAN countries to achieve the vision of a "Drug Free ASEAN" by the year 2020.

Process of democratization

The establishment of a democratic society in the Union of Myanmar is the cherished goal of the Myanmar people. As they are fully committed to the achievement of this goal, they are now laying grounds for the emergence of such a democratic state. Such a democratic system ought to reflect the aspirations of all the 135 national races of the country. While laying the ground work for a multi-party democratic system, the Government regards itself as a transitional government for the benefit and interest of the people and the nation. In other words, it is in the process of establishing and consolidating national unity, peace, stability and all-round development in the country in order that Myanmar may become a peaceful, prosperous, modern and developed nation in a not too-distant future.

A strong and enduring state constitution is a pre-requisite for building a multi-party democratic state. Myanmar has had two constitutions since her independence from Britain. The first (1947) Constitution was drafted in haste and according to Britain's requirements. Serious flaws were embedded in it, and one of which was the question of secession of the national races after ten years of independence. The insurgency problem which still haunts the country is the legacy of this constitution. In 1962, after the military took over the state power, the 1947 Constitution was abolished and a new one-party socialist constitution came into existence in 1974. Again this constitution was abolished in 1988 for a multiparty democratic system.

The country has gone through hard times because of the way some political parties acted in the past and also due to the inherent weakness of the previous constitutions. To keep the country perpetually stable and to have a functioning democracy, it is essential for Myanmar to have a strong and enduring constitution.

With this in mind, the National Convention, a disciplined forum for political dialogue has been convening with the aim to lay down fundamental principles to be enshrined in the future state constitution. All political parties as well as representatives from all strata of society are taking part in the convention giving their opinions and discussing to finalize the state constitution that would reflect the aspirations of all the 135 national races, residing in the Union. Through open and frank deliberations, the delegates have so far managed to reach consensus on 18 chapters and 104 basic principles. At the moment, the National Convening and Work Committees of the National Convention are working on the basic principles in the matter of power sharing between the central organs of the State and those of the States and Divisions. With half of the National Convention already completed, the delegates will be able to discuss this important and sensitive issue when the National Convention reconvenes. In view of the sensitive nature and its far-reaching implications for the future of the country, it is vital for the National Convention to proceed with great caution to safeguard the interest of all national races and not to repeat the shortcomings of the previous constitutions.

The Government firmly believes that the National Convention is the only political process suitable for Myanmar and that consensus will be achieved finally for a system which will ensure enduring peace and stability and prosperity in the country.

The Myanmar Government has managed to achieve the national reconsolidation and nation-building, an achievement which previous Governments were not able to accomplish and has also promoted peace and stability in the country. On the other hand, political and economic development is still sensitive and fragile and one false move could get the country to slide back into chaos and anarchic situation. With this in mind, it would not be difficult to understand why the government is determined to keep the momentum.

In this perspective, it is also important for the political parties in Myanmar to abide by the existing laws of the country. The Government does not interfere with the activities of the political parties when they pursue their work within the boundaries of the laws.

Like other political parties, the National League for Democracy (NLD) also enjoys all its rights and responsibilities under the existing laws. Nevertheless, at present, NLD is bent to take advantage of the tolerance of the Government and has, on more than one occasion, pursued courses of actions which could lead to undesirable upheaval.

It is also a known fact that Daw Aung San Suu Kyi is also initiating and takes part in political activities of her party within the boundaries of prescribed regulations and her personal safety.

The Government is committed to establish a democratic society in the country according to the aspirations of its countrymen. As the Government is transitional in nature, it does not intend to exercise state power any longer than it is necessary and this stance has been repeated time and again. It will transfer the state power to the people by convening a parliament once a firm and enduring state constitution has been adopted.

However, a constitutional process in a country can proceed only as far and as fast as circumstances permit. Myanmar is no exception, but the Government is doing its utmost for the advancement of the democratization process in the most expeditious manner.

In fulfilling its responsibility to implement the transition of the country from one political and economic system to another, the Government has to balance the political rights of one person or one political party with the rights of the whole population to live in peace and security. It also has to see the right to development of the entire population. At present, the Government views the right of the whole population to be of greater importance.

Attempts from the outside to set the pace and influence direction for Myanmar would not only hinder the process of democratization but also prove to be counterproductive. However, the Government of the Union of Myanmar will continue to be resolute in its commitment to establish a genuine multi-party democracy and will not waver from the political agenda it has laid down.

Economic development of the country

The market-oriented economic policy of the Government and its full encouragement of the private sector has led to the achievement of sustained economic growth for the country over the several past years. The country achieved an average annual growth rate of 7.5 percent against the original target of 5.6 percent in its four-year plan from 1992-93 to 1995-96. Total investment increased by an average annual growth rate of 31.6 percent during the plan period. This achievement was attained relying almost entirely on the country's own resources and foreign direct investment and also without the benefit of official development assistance (ODA) and concessional loans. However, the currency crisis in Asia has resulted in 5.3 percent reduction of foreign investment commitments in fiscal year 1997-98 compared to those in previous fiscal year and there were some slow-downs in economic growth. Even then the economic growth rate was still considerable, registering 5.7 percent against the target of 6.4 percent for the fiscal year 1999-2000.

A growth rate of slightly over 10 percent has been registered in the current year 2000-2001. As adequate infrastructure is a precondition for the sustained development of the country, the Government is focusing its efforts on infrastructure development. The Government has completed to-date 170 bridges including 5 Ayeyarwady River-crossing bridges, 114 dams, 43 hospitals, 79 dispensaries, 35959 primary schools, 2112 secondary schools, 953 high schools and 3844 miles of road, to mention just a few statistics and also border area development on an unprecedented scale for national races living in frontier areas.

For the economic development of the country, another sector to which the Government is paying particular attention is the agriculture sector. The agriculture sector of Myanmar accounts for 38 percent of GDP, 40 percent of total exports and employs 63 percent of total labour force. Therefore, agriculture sector occupied a place of importance in Myanmar economy. With a favourable ratio of population to land and abundant water resource, it is also an area Myanmar has a marked comparative advantage. For this reason, the first of the four national economic objectives of the Government is the development of agriculture as the base for all-round development of other sectors of the economy as well. To promote agriculture productivity, the Government has laid down five strategic measures under which it is carrying out an extensive programme of land reclamation in wet land and virgin land, granting large land holdings to private companies. As a result, the private sector alone has added 1.1 million acres to the existing arable land. At the same time, with a view to provide sufficient water to the agriculture sector, the Government has instituted a substantial programme for the construction of new reservoirs and dams, resulting in considerable increase in irrigated areas. Up to now the Government has constructed 114 dams. Through these efforts for the promotion of agriculture productivity, the Government is aiming to increase its export of rice and to contribute to food supply both domestically and regionally.

Positive developments regarding the recommendations of the ILC

The Union of Myanmar with her recorded history of over three thousand years, is rich in culture and tradition. Among the traditional customs endeavoured in Myanmar since time immemorial and which is still in practice is the contribution of labour. Myanmar nationals believe that the contribution of labour is both meritorious and conducive to mental and physical well-being. Accordingly, the local populace contribute labour in village community works. Construction and maintenance of religious edifices like pagodas, monasteries and temples, constructions of roads, bridges, hospitals as well as digging and cleaning lakes, ponds, wells and irrigation systems. The populace, who are contributing labour, look fresh and happy with full of mirth and laughter and in festive mood. They do not at all look unhappy; nor do they show signs of being forced to work against their will. This is one of the strong and clear proofs of the difference between the East and the West.

As the areas which were once held by the armed groups are now peaceful, owing to the Government's national reconsolidation process, a large number of armed forces personnel are now assuming the full responsibility for the construction of new motor roads and railroads in the country. In the past, when insurgency problem was rampant in the country, the Armed Forces members have sometimes had to employ civilian labourers to transport equipment and supplies over difficult terrain in the remote areas during military operations. Wages and other basic needs were adequately provided to the labourers in accordance with the rules and regulations of the country. Even such use of civilian labourers by the Armed Forces is not in practice now as almost all the armed groups have returned to the legal fold. The Government does not practise or condone the practice of forced labour.

But in recent years, there had been numerous allegations of the practice of forced labour in Myanmar and also that the relevant sections of the existing Village Act and the Towns Act of 1907, a legacy from the British colonial rule, were not compatible with the Forced Labour Convention 1930 (No.29).

Under the instruction of the Government of the Union of Myanmar, the Ministry of Home Affairs embarked on a review process in coordination with other Ministries either to amend or to supplement or to repeal the aforementioned two Acts to bring them in line with the changing situations and conditions of the country.

As a result of this review process, the Home Ministry issued Order No.1/99 on 14 May 1999, which instructs the Village Tract and Ward Peace and Development Councils and other local authorities concerned not to exercise the powers under those provisions of the two Acts relating to requisition for personal services. As the Order 1/99 was issued under the Directive of the State Peace and Development Council, which is the law-making body of the nation, it has the full force of law. It is indeed law.

Various means were utilized to give the widest possible publicity to the Order by explaining about it to the local and international media, in addition to circulating it to the State bodies and local authorities concerned. Moreover, the Order was published in the official National Gazette on 25 June 1999 - an official record where all laws, notifications, rules, regulations, directives and orders are officially published. This Order clearly stipulates that any person who fails to abide by the order shall have actions taken against him or her.

Furthermore, the Ministry of Home Affairs directed all local authorities concerned and all the police stations in the whole country to notify the Ministry of any complaint lodged for the breach of the Order.

In view of the above, it is quite clear that the positive and effective measures have always been taken in accordance with the recommendation of the Commission of Inquiry of the ILO Convention (29) of 1930 .

It is important to note here that the Commission of Inquiry recommended only to bring the Village Act and the Towns Act of 1907 in line with the ILO Convention (29). The recommendations do not specify the legal modalities of accomplishing this objective. As a matter of fact this objective has already been accomplished by the Myanmar authorities by the promulgation of Public Order 1/99 of 14 May 1999.

As a long-standing member of the ILO, Myanmar has maintained the tradition of closely cooperating with the organization. To keep in line with this tradition, the Government of the Union of Myanmar has on 14 October 1999 invited a technical team of ILO to visit the country in order that the two sides could discuss issues of mutual interest.

Similarly, the Government also invited Dr. Payaman J. Simanjuntak of Indonesia to visit Myanmar in order that he may see first-hand the real situation on the spot and study the labour issues in the country.

The First visit of the ILO Technical Cooperation Mission to the Union of Myanmar

Myanmar authorities sincerely believe that the visit of the Technical Cooperation Mission (TCM) could represent a significant step in its efforts to resolve the long-running debate over the alleged forced labour practice in Myanmar. Accordingly, the Myanmar Government took the initiative by extending an invitation to send an ILO Technical Cooperation Mission to Myanmar.

In response to this invitation, an ILO Technical Cooperation Mission, comprising: Mr. Francis Maupain, Special Advisor to the Director-General of ILO; Mr. Max Kern, Chief, Freedom of Workers Section; and Mr. Carmelo Noriel, official from the Regional Office for Asia and Pacific in Bangkok visited Myanmar from 23 to 27 May 2000. The Mission was also accompanied by Mr. Rueben Winston Dudley, Deputy Director, ILO Regional Office for Asia and Pacific in Bangkok, and Mr. Richard Horsey, Adviser, ILO.

The Mission was warmly welcomed by the Myanmar authorities. The Mission managed to accommodate their heavy schedule to three-working days, in order to be able to report to the 88th ILC in timely manner.

The Mission duly acknowledged in its report that the government authorities fully honoured their commitment to give the mission the necessary freedom of action to make contacts and agreed to adjust the programme of meetings with government representatives in order to allow other talks to take place. While in the country, it had discussions with senior officials from the various ministries and departments concerned and also held talks with the Secretary 1 of the State Peace and Development Council, Minister for Foreign Affairs, Minister for Home Affairs, and Minister for Labour".

During those talks "the government representatives indicated that, following the issuance of Order 1/99 and its wide circulation and publication, the exaction of forced or compulsory labour had stopped in practice, and offered reports by various agencies under the Ministry of Home Affairs on their implementation." The Myanmar authorities also confirmed that no complaints of forced or compulsory labour had come to the notice of the law enforcement bodies since the issuance of Order 1/99.

The Myanmar authorities also assured the Mission that "the exaction of labour had to be unlawful to be punishable under Section 374 of the Penal Code."

Meeting with the Secretary 1 of the State Peace and Development Council

A high point of the first visit of the TCM was its meeting with the Secretary 1 of the State Peace and Development Council. The Secretary 1 stressed that "Myanmar wished to have cordial relations with the ILO. He gave a very detailed account of the very rapid changes that were occurring in Myanmar and which, sometimes, caused certain difficulties. Myanmar differed from other countries in many respects. It still had far to go to catch up with its neighbours. But Myanmar did not wish to remain an "island"

among the other States. It wanted to develop relations with its neighbours, the international community and the international organizations. Discussions such as those that were taking place might make it possible to create the basis of trust necessary for this purpose."

"The Mission thanked Secretary 1 for giving it the opportunity to meet him. It expressed its appreciation for the practical arrangements made by the authorities and for the freedom that it had been granted to fulfill its mandate. The Mission had been able to put forward its views with complete frankness during the talks and that in itself constituted a certain success."

" The Secretary 1 thanked the Mission for the frankness with which it had expressed itself and said that he quite understood what it meant. He explained once again in detail the efforts made by the Government to ensure the development of the country and to re-establish unity through political, economic and social reforms. It had, to a great extent, succeeded in its peace efforts with the armed insurgencies. However, because it had been isolated for very many years, its infrastructure was extremely precarious and the improvements being made could only be gradual. The economic sanctions imposed on Myanmar added to its other problems. Although he acknowledged that there might have been recourse to so-called forced labour when work was being carried out on the infrastructure, these practices had ceased before the ILO report had been completed".

While in Yangon, the Technical Cooperation Mission (TCM) met the Minister for Foreign Affairs H.E. U Win Aung and the Minister for Labour H.E. Major-General Tin Ngwe. The Minister for Foreign Affairs explained to the Mission that the authorities could not be accused of harboring any sentiment other than the greatest goodwill towards the people of Myanmar, whose human and spiritual qualities the Mission could appreciate for itself. The Minister for Labour on the other hand pointed out that the country was currently in a transition period and thus it had to be careful with any measures that might affect the existing laws and regulations. Accordingly, he explained that the Order No. 1/99 is the most appropriate measures, and that it is in force and any violator would be punished.

The Mission also met with representatives of the National League for Democracy, ambassadors and diplomats based in Yangon and representatives of several international organizations.

Apart from it, the Technical Cooperation Mission was also given the opportunity to meet a senior Buddhist clergy with whom views and comments were exchanged.

The second visit of the Technical Cooperation Mission

The Technical Cooperation Mission (TCM) paid a second visit to Myanmar from 20 to 26 October 2000. On this occasion, the Technical Cooperation Mission (TCM), having a closer study of the issue, had a wider understanding of its origin, nature and implications.

Meeting with the Secretary 1 of the State Peace and Development Council

The Mission called on H.E. Lt. General Khin Nyunt, Secretary 1 of the State Peace and Development Council. He said that forced labour might have occurred in the past in the form of requisitioning of porters for military purposes due to the insurgency problem in the country. As that problem is solved, labour for reconstruction of the infrastructure in areas where insurgency once occurred are now remunerated. He emphasized that the Order No. 1/99 would not be just on paper but would have an effect right down to local level and violations of its provisions would be punished.

The Mission, also met the Minister for Foreign Affairs H.E. U Win Aung, the Minister for Labour H. E. Major-General Tin Ngwe and the Minister for Home Affairs, H.E. Col. Tin Hlaing. After the meetings, the Mission concluded that the views expressed by the Ministers confirmed that there was a common political will to achieve a definitive solution.

The Mission also met the Ambassadors from Asia and the Ambassadors from OECD countries separately, and the resident representatives of UN specialized agencies.

The TCM team indicated in its report to the Governing Body meeting that Myanmar Government has made progress and that there is a political will at the highest level of the Myanmar Government towards achieving a definitive solution.

The Myanmar observer representative to the 279th Meeting of the ILO Governing Body stated that Myanmar is also willing to accept an ILO representative either based in the Regional Office in Bangkok or based in Geneva, to observe, assess or assist the national supervisory mechanism in the implementation of Convention 29 on Forced Labour.

Order Supplementing Order 1/99 and concrete measures by the Myanmar Government

Immediately following the visit of the Technical Cooperation Mission, the Government of Myanmar, with the suggestions and advises by the TCM, issued the Order Supplementing the Order No. 1/99 on 27 October by which it prohibits forced labour in the country and thereby showing to the world its seriousness and its commitment to the principles of ILO.

Subsequently, various government departments issued orders supplementing the above mentioned Order. The State Peace and Development Council issued separate directive on 1 November 2000 to all the Chairmen of the State and Divisional Peace and Development Councils who are also regional commanders of the armed forces. A National Supervisory Committee, chaired by the Minister for Labour was also formed to monitor and evaluate the implementation process of the Order.

Before the 279th Meeting of the Governing Body of the ILO, Myanmar delegation met various regional groups of the ILO and worked closely with the AGC in Geneva. Many delegates expressed their understanding and sympathy and appreciated Myanmar's efforts for a solution to the issue.

Development at the 279th Meeting of the Governing Body

At the 279th Meeting of the Governing Body of the ILO, in recognition of the efforts by Myanmar, Malaysia, on behalf of the ASEAN member states of the ILO namely Indonesia, Philippines, Singapore and Vietnam, made a joint statement urging the Governing Body to take into account the latest positive developments, and Myanmar and the ILO to continue cooperation and to remain engaged in finding a lasting and effective solution. The joint statement was supported by Sudan, Russia, China, India, Pakistan and Algeria. Malaysia as a Titular Member of the Governing Body, also tabled a counter draft resolution which was co-sponsored by the above ASEAN countries to defer implementation of those measures adopted at the 88th session of the International Labour Conference.

However, despite repeated requests by Malaysia, the Chairman of the Governing Body did not have the draft resolution circulated to all Members of the Governing Body. Nor did he put it to a vote and the Governing Body eventually decided that all measures adopted at the 88th ILC would take effect on 30 November 2000 as the Governing Body as a whole was not satisfied with the progress in Myanmar. Furthermore, the Chairman ended the meeting abruptly thereby depriving the members from delivering their statements explaining their positions after the vote.

The Myanmar observer delegation made an oral protest to the Director-General of the ILO against the unfair and improper conduct of the meeting. It also handed its undelivered statement to the Director-General of the ILO and transmitted to the Chairman of the Governing Body, and requested them that it be circulated as the official document of the ILO.

In the Statement, the Permanent Representative of Myanmar stated that the Governing Body's decision is most unfair, unreasonable, unjust and is totally unacceptable. For these reasons, Myanmar

delegation totally and categorically rejects the decision and dissociates itself from it and any activities and effects connected with it. Accordingly, Myanmar would cease to cooperate with the ILO in relations to the ILO Convention 29 and any activity connected to it.

Subsequently, the Permanent Representative of Myanmar also wrote a letter to the Chairman of the Governing Body, lodging a protest against the unfair and improper conduct of the Governing Body.

In his letter, the Permanent Representative of Myanmar stated that at the meeting, the Chairman made a glaring procedural blunder, and contested the propriety and correctness of the unfair, improper and undemocratic way in which it was conducted.

Likewise, on behalf of the ASEAN countries concerned, Malaysia also registered dissatisfaction of the ASEAN members to the Chairman over the unfair treatment to them at the said meeting. They stated that it is their firm view that every alternative measure should be given careful consideration in situations where the decision of the Governing Body creates a precedent on a matter involving sanctions.

It is crystal clear that the present situation arose out of the attempts by some Western countries to exert undue pressure on Myanmar and isolate it.

Nevertheless, although Myanmar has dissociated herself from the decision of the meeting of the Governing Body of the ILO and decided to cease to cooperate with the ILO in relation to the ILO Convention 29 and any activity connected with it, she will, at the national level, continue to implement the legislative, executive and administrative measures she has already taken with a view to ensuring that there be no forced labour in Myanmar.

Developments in the field of human rights

Myanmar whole-heartedly subscribes to the human rights norms enshrined in the Universal Declaration of Human Rights. On numerous occasions, it has underscored that the Government neither permit nor condone any human rights violations. As a developing country, Myanmar gives particular attention to basic human rights such as food, clothing and shelter of the people.

At the same time, the Government of the Union of Myanmar is also prepared to co-operate with the relevant international organizations, wherever necessary and appropriate. One example of which is the significant step which the Government took in that direction in mid-1999. It received in Yangon a delegation from the International Committee of the Red Cross (ICRC) and made detailed arrangements for the delegation to visit the prisons in Myanmar and to interview the inmates in accordance with the ICRC standard procedures. The visits to the prisons were very successful and productive as the Government extended full co-operation to the ICRC delegation. The visits enabled both the ICRC and Myanmar to build mutual trust and goodwill and it is the initial step towards further co-operation with the ICRC.

Furthermore, in July 1999, the Government received a fact-finding mission of the Troika of the European Union in Yangon. It is hoped that the mission will pave the way for further significant strengthening of the relations between EU and Myanmar.

Similarly, in August 1999, the Government accepted Mr. Chris Sidoti, the Chairman of the National Commission for Human Rights of Australia to visit Myanmar. The visit provided an opportunity for Myanmar and Mr. Sidoti on the possible establishment of a national human rights institution in Myanmar. It also opened an avenue for co-operation between the two countries in the field of human rights.

Myanmar continued co-operation with the United Nations by accepting Mr. Alvaro de Soto, Assistant Secretary-General of the United Nations to visit Myanmar. He arrived in November 1999 and while in Yangon, he met the authorities concerned and some leaders of the national races who have exchanged arms for peace and entered the legal fold.

Similarly, the Government has accepted the visits of Special Envoy of the Secretary-General, Mr. Razali Ismail.

Religious tolerance

Myanmar is a predominantly Buddhist country as nearly ninety percent of its population of over 48 million are Buddhists. Understandably, those citizen of other faiths may be concerned about possible persecution or intolerance by another faith which is dominant. This concern, which is without reason, has been exploited by some for their own political motivation. Based on this misinformation, allegations on religious intolerance in Myanmar were deliberately made to mislead the public opinion of the international community.

Nothing can be further from the truth. As a matter of fact, religious harmony and freedom in Myanmar is well known to the outside world. The Government of the Union of Myanmar fully believes the importance of religious freedom in a multi-racial country like Myanmar and gives equal treatment to all the religions in the country. Our previous two Constitutions provided for safeguards against religious discrimination and religious intolerance. Similarly, the fundamental principles we have agreed upon in the National Convention process guarantee religious indiscrimination and religious tolerance.

As religious harmony and freedom in the country is a tradition shared by all faiths, the Government has taken all necessary steps to encourage this prevailing harmony. This is done by continuous contacts with the respective religious leaderships and providing necessary assistance in both financial and material terms in order that they may be able to promote their faiths effectively.

The Government is determined to promote and protect, to the best of its ability, all the religions in the country and help all religious groups in all possible ways to co-exist harmoniously with each other.

The right to development

The most fundamental and essential requirement for a country like Myanmar is to fulfill the basic needs of the people---food, clothing and shelter and also to raise their standard of living. Other aspects of human rights cannot be effectively implemented without fulfilling these basic rights. Civil and political rights are important but the Myanmar people believes that economic, social and cultural rights are equally important.

With this belief, the Government is making efforts for the advancement of economic and social conditions in the country where peace and tranquillity prevail currently. A transition from a socialist economy to an open-market one was made and the private sector plays the major component of the market system. It has led the achievement of sustained economic growth for the country over the past several years. Myanmar achieved an average annual growth rate of 7.5 percent against the original target of 5.6 percent in its four-year plan from 1992 to 1996. During the plan period, total investment also increased by an annual growth rate of 31.6 percent. This was achieved entirely by the country's own resources and foreign direct investment, without the benefit of ODA (Official Development Assistance) and concessional loans. But the currency crisis of Asia has resulted in 5.3 percent reduction of foreign direct investment commitments in fiscal year 1997-98 compared to those in previous fiscal years. It resulted in slow downs in economic growth.

For the sustained development of the country, an adequate infrastructure is a pre-requisite and the Government is focusing its efforts on infrastructure development. The Government has completed to-date 170 bridges including 5 Ayeyarwady River-crossing bridges, 114 dams, 43 hospitals, 79 dispensaries, 35959 primary schools, 2112 secondary schools, 953 high schools and 3844 miles of road, to mention just a few statistics and also border area development on an unprecedented scale for national races living in frontier areas.

Another sector to which the Government is paying particular attention is the agriculture sector. This sector accounts for the 38 percent of GDP, 40 percent of total exports and employs 63 percent of total labour force. Therefore, economic sector occupies a place of importance in Myanmar economy. With a favourable ratio of population to land, and abundant water resource, it is also an area Myanmar has a marked comparative advantage. For this, the first of the four national economic objectives of the Government is the development of agriculture, the base for all-round development of other sectors of the economy as well.

With the aim of promoting the agriculture sector, the Government has laid down five strategic measures under which it is carrying out the programme of extensive land reclamation in wet land and virgin land, and granting large land holding to private companies. As a result, the private sector has added 1.1 million acres to the existing arable land. To provide sufficient water, new reservoirs and dams were constructed. The aim of the Government is to increase its rice export and to contribute to food supply both domestically and regionally.

Rights of the child and the status of women

To upgrade the standards of health, education and fitness, the Government has laid down its social objectives accordingly and relevant ministries are working toward the successful realization of these objectives.

The Government believes that in order to uplift the morality of the country, the rights of women and children must be protected and further promoted as these groups form the most vulnerable groups. To reach this goal is to work within the framework of the UN system and accordingly Myanmar became State party to the UN Convention on the Rights of the Child in 1991 and in 1997 acceded to the UN Convention on the Elimination of All Forms of Discrimination Against Women. The initial reports were already submitted to the respective committees. These measures clearly demonstrate the importance the Government attaches to the welfare of women and children of the nation.

The Child Law was promulgated in 1993 and the National Committee on the Rights of the Child was formed to effectively implement the provisions of the Law. Apart from it, Committees on the Rights of the Child were also formed in State, Division and District levels. Juvenile courts were established and township judges were conferred as Juvenile Judges in areas where no such courts were established yet. The departments of health, basic education and social welfare have carried out the programmes of action in collaboration with the UNICEF.

Though there are constraints in carrying out the task of implementing the Convention fully and the fact was mentioned in the National Report of Myanmar to the Committee on the Rights of the Child, the Government of Myanmar is doing its utmost to overcome the difficulties on its own resources.

The Myanmar women have played an important role in many aspects of the country, but the most prominent movement is in social work. They have taken part in enriching and enhancing individual and group development or at promoting social and economic conditions. In the area of promotion and protection of rights of women, the Government has also assumed a leading role for the advancement of women and the Myanmar National Committee for Women Affairs (MNCWA) was formed in 1996.

The Myanmar National Working Committee for Women Affairs (MNWCWA) was subsequently formed to implement the developmental activities for women systematically. This Committee holds meetings every three months and visits various townships throughout the country in order to implement the Plan of Actions. The formation of MNWCWA was followed by the formation of State, Division, District and Township (grass-roots level) working committees for women's affairs. The working committee has identified eight critical areas of concern for the advancement of Myanmar women and they are as follows:-

1) Education - The main objective of this area is to promote the enrollment retention and completion of primary education of girls. One of the activities that is being implemented to achieve this objective is to support needy students.

2) Health - The sub-committee stresses the promotion of family health and also strengthened the Essential Obstetric-care services.

3) Violence Against Women - Although it is not a major issue in Myanmar, the working committee decided to address this issue as it can hinder women's advancement. Counselling centres to give services to the victims of marital violence have been established. A task force for trafficking in women and a group receiving communications directly from the victims are set up to combat violence against women effectively.

4) Women and Economy - This sub-committee implement activities such as skill-based or vocational training in non-traditional modern technology to gain easy access to employment. Small loans are given to women casual sellers in the markets.

5) Women and Culture - To preserve cultural heritage talks on national heroes, tradition, customs and religion are conducted, with the co-operation of schools and community leaders.

6) Women and Environment - Women have actively participated in environmental conservation.

7) Women and Media - National media are used to enhance the awareness of the women's role and contributions to the family, community and country and more women are involved in the management of the media.

8) The Girl-Child - Although there is no discrimination against the girl-child, the committee implements activities to promote the advancement of the target group.

Under its auspices, the First and Second Myanmar Women Conferences were held in December 1998 and January 2001 with the aim to develop the life of women in Myanmar. Plan of Actions to bring about interests of women in Myanmar was adopted by the Conference.

The Regional Consultation on Violence against Women and the Role of Health Sector was held in Yangon in early 1999 as the issue of violence against women is of major concern of the world community.

Because of the unique culture , tradition and practice of the society in Myanmar, violence against women is not a major issue in the country. Nevertheless, surveys and research projects are launched in the country in order to obtain more data on this subject. Discussions and seminars on violence against women are held in various townships and counselling is also made available to the women in need of such service.

Lady officials of Myanmar also participated in ASEAN meetings to exchange experience and knowledge in the field of women issues. In short, the role of Myanmar women plays an important part in the national development process.

Apart from this National Machinery, the NGOs have played a major role in alleviating social and economic conditions. There are many women's organizations and among them are Myanmar Maternal and Child Welfare Association (MMCWA), the Myanmar Women's Sports Federation (MWSF), the Women chapter of the Myanmar Medical Association (WCMMA) and the Myanmar Women Entrepreneurs Association (MWEA) to name a few. These NGOs are working together with the National Committee for the advancement of women. The Government renders assistance to them in order that they may be able to carry out their programmes more efficiently.

The Myanmar Maternal and Child Welfare Association (MMCWA), the country's largest non-governmental organization with branches and associations all over the country has been working closely with the Government to promote the health and well-being of mothers and children.

The Association is actively playing a leading role in the following sectors such as catering to the health of mothers and children in urban and rural areas, reducing maternal and infant death rates,

conducting training in breast feeding, taking part in National Immunization Day activities, birth spacing projects and taking control measures for AIDS, prevention of iodine deficiency ,providing health care services. These could be seen as important activities concerning women and children. The Association also aided the officials of the Health Ministry to draw health plan. The Association received the WHO award for outstanding performance on primary health care.

The Myanmar Women Entrepreneurs Association is also active in enhancing the role of the Myanmar women. It is implementing income-generating programmes for rural women and give small loans to women who run small-scaled, home-based industry.

The Myanmar Women Sports Federation promotes the participation of women in sports as well as the development of women physically, mentally and morally. The Myanmar women have acclaimed outstanding achievements at international competitions.

Conclusion

The Government of Myanmar is committed to the establishment of a democratic political system and taking steps towards the achievement of that goal.. At the same time, the Government is making every effort to improve the overall situation of the country in the face of various constraints and obstacles and undue international political pressures. The fact that peace stability is now prevailing in areas where insurgencies were wide-spread in the past and the fact that the Government has accomplished many achievements on the economic front attests to the measure of the success of the Government's endeavours.

Consideration of the situation of human rights in Myanmar without fully taking into account all aspects of the difficulties, confronted in transition to a new political system, and the concrete achievements of the Government in many areas, outlined above, will not be fair and balanced by any standards. It is, therefore, hoped that the draft resolution will faithfully reflect the objective situation in the country and the positive measures taken by the Government in a fair and balanced manner.

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 14 (a)

SPECIFIC GROUPS AND INDIVIDUALS
MIGRANT WORKERS

Note verbale dated 14 March 2001 from the Permanent Mission of Canada to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Secretary-General of the United Nations (Office of the High Commissioner for Human Rights) and has the honour to refer to the report of the Special Rapporteur on the human rights of migrants, Ms. Gabriella Rodriguez Pizarro, on her visit to Canada in September 2000 (E/CN.4/2001/83/Add.1).

The Permanent Mission of Canada has the honour to forward the attached comments* and requests that they be circulated as an official document of the Commission on Human Rights.

* Reproduced as received, in English and French only.

Annex

Report on the visit to Canada of Ms. Rodriguez,
United Nations Special Rapporteur on the Human Rights of Migrants

The Government of Canada would like to thank Ms. Gabriela Rodriguez Pizarro, United Nations Special Rapporteur on the Human Rights of Migrants, for her visit to Canada from September 17 to 30, 2000. Canada was the first country to invite the Rapporteur and urges other countries to do so. Such cooperation will assist her in fulfilling her three-year mandate: "to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation."[1]

Canada notes with satisfaction that the Rapporteur supports Canada's efforts in dealing with trafficking of persons. Since the Rapporteur's visit, Canada has signed the *United Nations Convention against Transnational Organized Crime* (TOC) and its two supplementary protocols. In *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,* 'trafficking in persons' is defined as "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of the person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"[2]. In *The Protocol Against the Smuggling of Migrants by Land, Sea and Air,* the definition of 'smuggling of migrants' is "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident"[3]. In addition to the signing of the TOC, Canada would like to point out that its *Immigration and Refugee Protection Bill*, which was tabled in Parliament on February 21, 2001 will improve the government's ability to combat the smuggling of migrants and trafficking of persons. The new legislation reintroduces severe penalties, e.g. fines of up to CAN$1million and life in prison for people smugglers and traffickers. It will also clarify the grounds for detention to take into account the fact of large scale smuggling.

A significant part of the Special Rapporteur's report is based on individual interviews with migrants (paragraphs 48 to 64). The Canadian government agreed with and respected the

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[1] Text of the United Nations Resolution (1999/44) creating the position of Special Rapporteur on the Human Rights of Migrants

[2] Text of the *United Nations Convention against Transnational Organized Crime (TOC) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*

[3] Text of the *TOC Protocol Against the Smuggling of Migrants by Land, Sea and Air.*

Special Rapporteur's request that no Canadian government officials be present when she interviewed individual migrants. The report provides the first opportunity for Canadian officials to be informed of what individual migrants said. Canada wishes to assure the Rapporteur that it will investigate the situations described in the report and take appropriate action.

We note the Rapporteur's concerns regarding the measures that Canada took during the summer of 1999 for the purpose of, according to paragraph 49 of the report, controlling its borders and strengthening the refugee admission process. The exceptional measures taken by Canada in the summer of 1999 were part of an effort to combat illegal immigration and, in particular, smuggling of migrants. These measures were taken following the arrival of 600 persons in various ships on the west coast of Canada. Most of those who arrived did subsequently apply for refugee status in Canada. The report correctly indicates that the Minister of Citizenship and Immigration offered all asylum seekers a full hearing of their case. It is important to note that those who arrived by the first boat were allowed to come into Canada, released on conditions to report, in order to pursue their claims to refugee status and that the vast majority failed to report and could not be located. It is only after this experience that detention measures were implemented for subsequent marine arrivals, and then only upon consideration of the individual circumstances of each person. Therefore, the decision to detain these asylum-seekers, before the hearing of their case, was taken in the face of strong evidence that the people would not likely appear for their refugee hearings, as well as their inability to establish their identity. All legal safeguards were in place to protect their human rights. Canada is convinced that these actions, in these particular circumstances, were consistent with the provisions for exceptional detention of asylum seekers as set out in the UNHCR's Guidelines on applicable Criteria and Standards relating to the Detention of Asylum-Seekers.

Canada's guidelines for immigration detention stipulate that the detention of asylum seekers is an exceptional step. The *Immigration Act* allows for detention only if there are reasonable grounds to believe an individual (a) poses a danger to the public; (b) is unlikely to appear for a proceeding or removal, or; (c) is unable to establish identification. While a large proportion of people seeking asylum in Canada do not have documentation or identification, they are not detained. It is important to note that the Canadian government cannot detain anybody without a legal oversight: the Department of Citizenship and Immigration is required to bring every person for which they seek continued detention before an adjudicator, and establish to the satisfaction of the adjudicator that sufficient reasons continue to exist that justify the detention of the person concerned. Such a review must take place after 48 hours of the initial detention and, should the person not be released, with further reviews scheduled after 7 days and each subsequent 30-day period. The decisions, made by an independent tribunal, may be appealed to the Courts. No exception to these provisions was made for the people who arrived by ship in 1999.

Under the new *Immigration and Refugee Protection Act*, the detention process will be more effective and transparent. Criteria will be established through Regulations, to ensure that the appropriate factors are considered when detention decisions are taken. The Immigration and Refugee Board (IRB) will give priority to hearings for those being held in detention. This should prevent refugee claimants from remaining in detention for long periods of time. In cases

of unprotected minors arriving as part of a criminally organized smuggling or trafficking operation, the new legislation stipulates that detention will be truly a last resort and Canada will make every effort to arrange with provincial services to protect these children effectively. The new *Immigration and Refugee Protection Act* will also provide for a streamlined and more effective refugee determination process.

Canada welcomes the recommendations made by the Rapporteur. In particular, the Canadian government is committed to continuing its work with civil society and with the academic community on immigration policy. Canada intends to remain an active member of the Puebla Process[4] and will "continue with and further develop this type of forum", as suggested by the Special Rapporteur.

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[4] The Regional Consultation Group on Migration (Puebla Process) is an intergovernmental process for discussion of the full range of international migration issues among Canada, the U. S. A., Mexico, Guatemala, Honduras, Belize, El Salvador, Nicaragua, Costa Rica, Panama and the Dominican Republic.

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Agenda item 8

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 15 March 2001 from the Permanent Observer of Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

In follow-up to my previous letters concerning the continued deterioration of the situation of human rights as well as the persistence of the Israeli criminal war against the Palestinian people in the occupied Palestinian territory, including Jerusalem, please find herewith enclosed an urgent appeal issued by H.E. Dr. Riyad Za'noun, Minister of Health in the Palestinian National Authority.

I would be grateful if you could have the enclosed document* distributed as an official document of the fifty-seventh session of the Commission on Human Rights under agenda item 8.

(Signed): Nabil RAMLAWI

Ambassador
Permanent Observer

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* Reproduced as received, in English only.

GE.01-11958 (E)

Annex

Urgent appeal

In the time the Palestinian people in the west Bank and Gaza are suffering from the arbitrary occupation measures, since more than 5 months in the form of collective punishment, including siege and closure of all cities, in addition to shooting and bombarding of the civilians leading to thousands of injuries.

In the last few days, the occupation authority had escalated their restrictive measures against the civilian population, including complete closure of all enteries and exits of all villages isolating them from each other and from the nearest cities.

A flagrant example is that 33 villages located north west to Rammallah including Beirzeit university, had been completely isolated, and consequently 80000 population are not allowed to leave their villages, or to reach Rammallah where all health and educational institutions are located.

Today 11/03/2001 the same restrictive measures were applied to all villages around Jerusalem.

Under such harsh inhuman arbitrary measures, and circumstances the MOH became unable to provide its vital activities, and its routine medical services both curative and preventive measures, particularly the implementation of the vaccination programs and campaigns to our children, which creates serious situation that can lead to the spread of very dangerous epidemics.

Most of the medical teams are not allowed to reach the hospitals and the primary health care institutions, which are almost paralyzed, and cannot provide their services, and meet their commitments towards civilian population.

Even the waste disposal operations, cannot be carried out, leaving piles of garbage in the towns and villages, and this will impose serious danger and consequences to health and environment.

Nevertheless the ambulances are not allowed to transfer the injured peoples and patients to the medical institutions, such a case seriously endanger the life of our people.

All these measures are considered serious violations to the principles of human rights, and all international laws and legitimacy including the famous fourth Geneva Convention, which stresses on the nessicity of maintaining the civilian's health during wars.

On behalf of all our people and deprived children and on behalf of the humanity, we appeal urgently to the united nation, all international society, and peace lovers, all over the world, and in particular to all international human rights agencies, and red cross, crescent institutions, to act immediately and take the necessary intervention, to stop all these none human arbitrary acts against Palestinian people to allow them living in peace with dignity and to enjoy their basic human rights as other nations .

Minster of Health

Dr. Riyad Za'noun

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COMMISSION ON HUMAN RIGHTS
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Item 20 of the provisional agenda

RATIONALIZATION OF THE WORK OF THE COMMISSION

Report by the Chairperson, of the seventh annual meeting of special rapporteurs/representatives/experts and chairpersons of working groups of the Commission on Human Rights, Ms. Katarina Tomasevski, submitted, pursuant to Commission on Human Rights decision 2000/109, annex, paragraph 11

1. Following the recommendation of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission that the special rapporteurs continue to closely follow the work currently under way in the General Assembly concerning a possible code of conduct for experts on mission (E/CN.4/2000/112 and decision 2000/109, annex, para. 11), the seventh annual meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, held in Geneva from 5 to 9 June 2000, discussed ongoing developments and decided that the Chairperson should continue monitoring developments in respect of the draft code of conduct and report on her activities to the eighth annual meeting and that the eighth annual meeting would also consider the question of reviewing the draft guiding principles for special rapporteurs and merging it with the Manual for Special Rapporteurs (E/CN.4/2001/6, para. 105 (j) and (k)).

GE.01-12104 (E)

2. In its resolution 55/221 of 23 December 2000, the General Assembly requested the Secretary-General to submit additional information on whether the proposed regulations governing the status, basic rights and duties of officials other than Secretariat officials and experts on mission ensured the impartiality, neutrality, objectivity and accountability of the officials concerned and to undertake consultations on the proposed regulations regarding their possible impact on the independence of experts on mission who are elected by the General Assembly and its subsidiary organs.

3. On 29 January 2001, the Chairperson was asked by the Office of the Under-Secretary General for Management for comments by the special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme. She replied on 4 February 2001, noting that the eighth annual meeting would be held from 18 to 22 June 2001 and asking whether the comments could be forwarded thereafter. She also requested clarifications, background information and documents necessary for the review of the proposed regulations by the special rapporteurs.

4. As soon as a response has been received from the Office of the Under-Secretary-General for Management, the special rapporteurs will initiate their review of the proposed regulations, forward their comments as requested and keep the Commission on Human Rights informed of all pertinent developments.

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Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Letter dated 26 March 2001 from the Permanent Representative of Armenia to the United Nations Office at Geneva addressed to the Chairperson of the Commission on Human Rights

I would like to refer to documents E/CN.4/2001/131 of 22 February and E/CN.4/2001/135 of 2 March 2001 containing statements by the Ministry of Foreign Affairs and the Milli Majlis of the Republic of Azerbaijan.

These statements, circulated under agenda item 9 of the fifty-seventh session of the Commission on Human Rights, amount to highly irresponsible and unacceptable attempts at the State level to politicize the work of the Commission.

In my letter of 28 December 2000, I already drew the attention of the Commission to the destructive nature of the State propaganda machinery of the Republic of Azerbaijan aimed at jeopardizing the genuine mandate of the Commission.

By spreading totally groundless information and scenarios authorized by governmental agencies and ministries, Azerbaijan hinders the proceedings of the annual session of the Commission, demonstrating pitiful efforts to distort the historical progression of events in the region.

My delegation considers any comments on the absurd contents of these statements meaningless and furthermore counterproductive. It also condemns the circulation of such shameful disinformation, which creates major obstacles for the promotion of constructive exchanges and dialogue within the Commission.

I would be grateful if you could circulate this letter as an official document of the fifty-seventh session of the Commission under agenda item 9.

(Signed): Karen NAZARIAN
Ambassador
Permanent Representative

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Agenda item 8

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 23 March 2001 from the Permanent Representative of Egypt to the United Nations Office at Geneva addressed to the Chairperson of the Commission on Human Rights

In my capacity as Chairman of the Council of Arab Permanent Representatives in Geneva Members of the League of Arab States, I would like to enclose herewith the letter dated 23 March 2001, addressed to Professor John Dugard, Chairman of the human rights inquiry commission for Palestine, established by resolution S-5/1 adopted on 19 October 2000 by the fifth special session of the United Nations Commission on Human Rights, from the Council of Arab Permanent Representatives, concerning the inquiry commission's report.

The Council of Arab Permanent Representatives would appreciate if you could circulate the attached letter* to all members of the Commission as an official United Nations document.

(Signed): Fayza ABOULNAGA
Ambassador
Permanent Representative

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* Reproduced as received, in English only.

Annex

DELEGATION PERMANENTE
DE LA LIGUE DES ETATS ARABES
Auprès des Nations Unies
et des Organisations Internationales
GENEVE

Ref. 53/2001

Geneva 23 March 2001

Dear Sir,

In my capacity as chairman of the Council of Arab Permanent Representatives in Geneva Members of the League of Arab States, I would like to express the Council's appreciation for the information and the facts provided in the report of the Human Rights Inquiry Commission established by resolution S-5/1 adopted on 19/10/2000, by the Fifth Special Session of the United Nations Commission on Human Rights.

The Council views the report, which was prepared generally in line with the mandate given by the fifth special session of the CHR, as an important, objective and factual report describing the actual ongoing suffering and real tragic situation of the Palestinian People in the occupied Palestinian territories subjected to what tantamounts to an all out war by Israel the occupying power.

However, the Council considers paragraph 26 of the conclusions and recommendations of the report, due to the elements and proposals contained in it, as well as its formulation, as an unacceptable paragraph that should not have been part of the said report, for the following reasons:

1- The Palestinian refugees issue is governed by relevant U.N Resolutions, which cannot be altered or amended by any other body and as such does not relate to the mandate given to the inquiry commission.
2- The General Assembly in its resolution 194 dated 11 December 1948, affirms the right of return to the Palestinian People.
3- The General Assembly in its resolution 302 (IV) of 8 December 1949, established the United Nations Relief and Works Agency (UNRWA) for Palestine Refugees in the Near East, as the U.N Agency responsible for carrying out relief and works programs for Palestinian refugees.

4- The 1951 Convention Relating to the Status of Refugees, in its article 1D stipulates:

> "This convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance."

The Council of Arab Permanent Representatives, while reiterating its appreciation for the Commission's objective report wishes to draw the latter's attention to this extremely serious issue which constitutes a fundamental element in any effort towards realization of a just and durable peace in the Middle East.

The Council would also like to inform you that they will request to circulate this letter to all members of the CHR as an official United Nations document.

Please, accept sir, the assurances of my highest consideration.

Fayza ABOULNAGA
Ambassador, Permanent Representative
Of Egypt and the Chairman
Of the Arab Group
For the month of March 2001

Professor John Dugard
Chairman of Human Rights Inquiry Commission for Palestine
Palais Wilson
Geneva

UNITED NATIONS **E**

Economic and Social Council

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27 March 2001

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 6

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Letter dated 26 March 2001 from the Permanent Mission of Latvia to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith* the text of the statement made by H.E. Mrs. Vaira Vike-Freiberga, President of the State of the Republic of Latvia, marking the International Day for the Elimination of Racial Discrimination.

I would be grateful if you would issue this text as an official document of the fifty-seventh session of the Commission on Human Rights, under agenda item 6.

(Signed): Janis KARKLINS
Ambassador
Permanent Representative

* Reproduced as received, in English only.

Annex

Statement by Dr. Vaira Vike-Freiberga,
President of the Republic of Latvia,
marking the United Nations
International Day for the Elimination of Racial Discrimination

March 21, 2001

Racism and discrimination, just like prejudice, injustice and violence, are part of human nature, but they need not be an inevitable part of it. They stem in part from our biological heritage, for suspicion and mistrust arise out of the same arousal mechanisms as the wariness and alertness that allow the detection of danger. The need for survival has planted in us biologically programmed survival mechanisms for fight and flight, which translate into the intense emotions of fear, hatred, and the impulse to destroy. This is the biological heritage that makes the human race capable of deliberate harm towards others, and makes it prone to the violence, sadism and brutality from which no society on earth has ever been entirely free.

Yet we are not doomed by this heritage, for Nature can be shaped and modified by Nurture. Through training and upbringing, the human child acquires not just consciousness but also a conscience. Each society develops its own set of values, its own sense of right and wrong, which are then passed on from one generation to the next. This is culture, which represents the accumulated wisdom of countless generations.

Each culture faces the challenge of containing the aggressive and anti-social tendencies among its members, of channeling them into socially acceptable outlets. Too often, this is done by forbidding aggression towards members of the in-group, but allowing it or even encouraging it toward non-members of the group. The easiest way to accomplish this is by a simple manipulation of how we define humanity: **We** are truly human, but **they** are not.

The denial of humanity to one's enemies is, alas, as old as humanity itself. Civilized rules of self-restraint can then be conveniently restricted only to oneself and one's

own kind. The Other becomes branded as the enemy, which conveniently allows treatment by a completely different set of rules. The Enemy is something to be fought against and persecuted, especially when it is represented as the ultimate threat to the values one holds dear. In the worst case, the Enemy is to be exterminated, the world cleansed of its presence, and its very memory washed away in blood.

It does not make much difference under what label the distinction between Us and Them is made. It can be a clearly visible difference in physical appearance, and then we call it racism, it can be the biological difference between men and women, and then we call it sexism. It can be the difference between the Faithful and the Infidels, between those who subscribe to The Correct Ideology – be it a religious creed or a secular Party Line – and those who do not. The distinction between Us and Them can also be based on the language spoken, the ethnic group or tribe one belongs to, the geographical space one inhabits, or the social class one belongs to. It does not really matter what the grounds for the distinction are. The main thing is to find some excuse for marking some subcategory of people, for excluding them from full and legitimate membership in the human race.

The exercise of racism and prejudice frequently takes on the mask of righteousness. So often it claims to be exercised in the defense of fundamental values that are held dear, be they the laws of God or man, or the traditional virtues, or be it the righteous fight against vice, sin and moral pollution. How **do** we distinguish legitimate defense of righteousness from its counterfeit, which is an expression of racism or prejudice?

I believe we can achieve this by following a few very simple principles. The first and most fundamental principle of all is that of the sanctity of human life. It is a principle that has taken thousands of years to develop, and has known passionate and violent opposition throughout the centuries. It is not an easy principle to apply; yet without it, there is little hope of maintaining civilization.

The second fundamental principle is the one of equality. We must believe this truth to be self-evident, that all human beings are created equal. We must accept that all

members of the human race possess equal rights, equal privileges and equal responsibilities as part of their inherent birthright.

Racism, prejudice, discrimination, all these can be eliminated by simply accepting every human being's inalienable right to being considered as human. Young children need to be trained into accepting diversity and difference without being threatened by it. Young girls must be taught that their biological destiny as child-bearers need not exclude them from achievements in business, science, politics or the arts. Young boys must be taught that manly is not the same as brutish or brutal. All of us must learn empathy, sympathy and compassion.

These universal principles, if accepted worldwide, must of necessity take precedence over any local customs, tastes or preferences. This does not mean reducing the whole planet to mechanical uniformity. It does not mean eliminating all the differences in language, action, thought and taste that constitute the richness and variety of the world cultural heritage. But it does mean some consensus on what it means to be truly human. By accepting the dignity of every other human, we ourselves will become not only more human, but more humane as well.

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UNITED NATIONS **E**

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 12 (a)

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

VIOLENCE AGAINST WOMEN

Letter dated 28 March 2001 from the Permanent Representative of Georgia to the United Nations Office at Geneva addressed to the Chairperson of the Commission on Human Rights

Upon the request of the Government of Georgia, I have the honour to ask you to circulate the attached document "Violence against women in Georgia" during the fifty-seventh session of the Commission on Human Rights under agenda item 12 (a).*

(Signed) Amiran KAVADZE
Ambassador
Permanent Representative

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* Reproduced as received, in English only.

Annex

Violence against Women in Georgia

In accordance with the provisions of the Constitution of Georgia, every human being is equal before the law regardless of, inter alia, his/her sex (Article 14). Marriage is based upon equality of rights and free will of the spouses. The state promotes the prosperity of the family. The rights of mothers and children are protected by the law (Article 36). In general, the constitutional provisions guaranteeing human rights and freedoms are based on the principles of gender equality and non-discrimination. Furthermore, the Georgian legislation, proceeding from the constitutional principles, attaches particular attention to the equality between men and women, in criminal, civil or any other matters. Moreover, the Labor Code provides for measures of special protection concerning women's labor conditions, maternity leave, etc.

According to the Decree of the President of Georgia of August 28, 1999 "on the Measures on Strengthening the Protection of Human Rights of Women" various Governmental bodies have been granted the authorization with the aim of facilitating the implementation of recommendations of the Committee on the Elimination of Discrimination against Women. In particular, the Ministry of Internal Affairs, in collaboration with the Prosecutor's Office, was instructed to collect and process the data regarding each fact of violence against women, as well as to provide the registration of facts of domestic violence and carry out preventive measures for exposing and eliminating such kind of violence.

In the context of the issue in question, it should be emphasized the importance of the Order #64 "On Approval of the Action Plan on Combating Violence against Women (2000-2002)". The present Action Plan provides for the following objectives:

- Improvement of studying of the nature, character and results of violence against women, analysis of exercising legislation against violence;
- Obtaining information on domestic violence, making the information a subject of public discussion. Prevention of domestic violence and decrease of such kind of cases;
- Elaboration of special programs for potential perpetrators;
- Development of legislation, enforcement of laws and court decisions;
- Assistance to victims of violence and their protection;
- Obtaining information on professional violence and making it a subject of public discussions. Studying causes and results, their prevention and decrease;
- Combating ethnic violence, support of victims of ethnic conflicts, deportation, internal displacement or exile;
- Obtaining information on ecological violence (i.e. the alteration of genetic-fund through destruction of living environment and ecological changes, violation of the right to live in harmless environment) and making it a subject of public discussion;
- Obtaining information on cases of violence against girls, coordinating study of causes and results, making them a subject of public discussion, analyzing of exercising of the legislation available in the field of violence against girls;
- Prevention and elimination of trafficking in women for the purpose of sexual exploitation.

The special strategy has been worked out, in order to achieve the objectives listed above. The executors of the Action Plan are to be both legislative and executive bodies, as well as NGOs, trade unions, means of mass media.

In order to carry out the tasks provided for by the presidential Decree the executive bodies concerned are entrusted with submitting annual reports as to their activities to implement the above Decree.

The Ministry of Internal Affairs (MIA) is one of the key executors of the tasks provided for by the Action Plan. Therefore, at first stage, it was considered reasonable to pay particular attention to training of law enforcement officials. The National Security Council of Georgia (namely, Deputy Secretary of the NSC on Human Rights Issues) and NGO "Former political prisoners for human rights" elaborated the joint project entitled: "Seminars at the police stations". This project was financed by Horizonti Foundation, within the framework of the program for co-operation of governmental agencies and NGOs. In the course of realization of the project a number of seminars has been held at 22 police stations throughout Georgia. During the seminars Georgian law enforcement officials have had a good chance to receive appropriate information, e.g. with respect to rights and duties of policemen, new legislation and the rights of individuals, international experience in the field of human rights protection. The participants of the seminars and resource persons were discussing a wide range of relevant issues including, inter alia, those connected with violence against women and gender equality, on the whole. The text of the Presidential Decree on Measures of Strengthening the Protection of Human Rights of Women in Georgia was distributed among policemen.

In 2001 within the framework of the above-mentioned project it is planned to hold such seminars at 18 more police stations.

According to the Ministry of Internal Affairs, special training courses are organized for local police officers to raise awareness in gender-related issues, as well as on matters linked to treatment towards victims of violence, and police conduct in cases of domestic violence. Next year gender and violence-related issues shall be included into MIA Academy curricula.

To facilitate the contacts with women, who become victims of violence, the female police officers deal with such cases. Some statistical data: up to date, 862 female police officers have worked at MIA bodies, including 136 investigators. In 2000 101 women have been hired to MIA bodies as police officers. 27 of them are investigators.

Prevention of crime is a key task assigned to MIA bodies. In this respect particular attention is paid to revealing and preventing the crime connected with domestic conflicts, especially that eventually entail violence against women. Up to date some 4000 domestic conflicts are on records throughout the country; special control files are established, and respective measures are under way to settle the conflicts in question.

Following the preventive steps taken by police in 2000 some 1200 domestic conflicts were resolved, more or less, and further aggravation of situation has been avoided. In this context it should be noted that domestic conflicts are mostly revealed through citizens' complaints received, but very often conflicting parties are reluctant to apply to police, trying to resolve their contradiction by themselves.

During 11 month of 2000 police registered 45 rapes. In each case perpetrators were found and prosecuted. Unfortunately, number of rapes increased by 40 per cent compared with the same period of 1999. Furthermore, in 2000 MIA investigative units have initiated 31 criminal cases in connection with acts of violence against women (15 acts of burglary, 16 bodily injuries).

The new Criminal Code of Georgia that entered into force on July 1, 2000 contains the chapter XXII titled "Crimes against sexual liberty and sexual inviolability of person". This chapter contains several articles relating to corpus delicti associated with rape/sexual assault.

When committing rape, the Criminal Code stipulates the following aggravating circumstances:

- If the crime was committed several times;
- If the crime was committed by a person who had committed crimes against sexual liberty/sexual inviolability before;
- If the crime was committed by a group of individuals;
- If the crime was committed against pregnant woman, or against minor;
- If the crime was committed with particular cruelty towards a victim or other persons;
- If the crime was committed by use of the perpetrator's official position;
- If the crime committed has entailed a victim's death (by negligence);
- If the crime committed has entailed infecting of a victim with AIDS (by negligence), bodily injuries or other grave consequences.

The Criminal Code envisages also the following crimes:

- Coercive actions of sexual nature (i.e. sexual contacts in perverted form by use of violence, threat of violence, or by making use of a victim's helpless state). In this case the aggravating circumstances are the same as in the event of a rape.
- Compulsion to sexual intercourse with exploiting of official dependence of a victim, or under the menace of disclosure of disgracing information about a victim;
- Sexual intercourse or other sexual assault towards a person under 16;
- Lecherous actions towards a person under 16.

The Criminal Code provides for various punishments for the crimes listed above. In particular,

- Rape is punished with imprisonment for 3-7 years, under aggravating circumstances – for 5-20 years;
- Coercive actions of sexual nature are punished with imprisonment for 3-7 years, under aggravating circumstances – for 5-20 years;
- Compulsion to sexual intercourse is punished with fine, or corrective labor up to one year, or imprisonment up to 2 years;
- Sexual intercourse or other sexual assault towards a person under 16 is punished with restriction of liberty up to 3 years, or arrest up to 3 months, or imprisonment up to 3 years;
- Lecherous actions towards a person under 16 are punished with fine, or corrective labor up to one year, or imprisonment up to 2 years.

As to court rules on cases of rape, in conformity with the Criminal Procedure Code, trial in all Georgian courts is open to public, but under certain circumstances the case may be considered

in court sitting completely or partially closed. In particular, by court decision, the case concerning sexual crime may be considered in camera, if parties so request.

The Criminal Code considers as aggravating circumstance any sexual assault towards a child, and envisages more severe sanctions for such crimes.

The criminal legislature of Georgia does not include such crime as sexual harassment. At the same time, women, on the equal footing with men, have unrestricted access to any legal remedies to protect their dignity at workplace or somewhere else, in accordance with the Constitution and the law.

As regards the General Recommendations on Violence against Women adopted by the Committee on the Elimination of Discrimination against Women (eighth and eleventh sessions in 1989 an 1992), it should be advisable to mention once more the Action Plan on Combating Violence against Women. The plan stipulates, inter alia, as follows:

- To increase awareness of society on professional violence (including sexual harassment at work place);
- To work out laws on this form of violence envisaging resolutions of the United Nations, basic human rights instruments and legislation of civilized countries.

The implementation of the above-mentioned tasks is only possible by close co-operation of the state bodies (Ministries of Justice and of Labor, Health and Social Affairs) and the non-governmental institutions (e.g. Public Defender), trade unions, with assistance of the media. In accordance with the Plan, the measures enlisted above are to be carried out from 2000 to 2002.

In conformity with the law in force prostitution as such does not constitute a crime. At the same time, according to the new Criminal Code, the following acts are classified as crimes:
- Inveigling into prostitution through use of violence, threat of violence or of destruction of property, as well as by blackmail or fraud (Article 253);
- Organization and keeping of the den for prostitution (Article 254);
- Inveigling a minor into prostitution or other sexual lechery (Article 171, Paragraph 1).

Various sanctions are imposed for commitment of these crimes: from fine to imprisonment up to 2-5 years.

According to the Ministry of Internal Affairs, in 1999 and first six months of 2000 four criminal cases were initiated on prostitution-related crimes. During the same period law enforcement institutions elicited a few facts when minor girls were inveigled into prostitution. Within the framework of Presidential Program on Social Protection, Professional Training and Prevention of Delinquency in Adolescents (1996-1999), special rehabilitation centers were set up for children in conflict with the law. Minor prostitutes are also sent to these centers where they have the opportunity to get comprehensive education and development.

There is no special statistics in Georgia regarding violence against prostitutes.

In the context of trafficking in women, special Section of the Action Plan on Combating Violence against Women is to be noted. In order to provide prevention and elimination of trafficking in women, to condemn trafficking for the purpose of sexual exploitation as an

infringement of the basic principles of human rights, the following measures are stipulated by the Plan:
- To define trafficking in all its elements and reinforce the sanctions accordingly;
- To collect data on trafficking for the purpose of sexual exploitation, work out programs for protection of its victims;
- To facilitate co-operation among law enforcement, migration, social, legal and administrative bodies for elimination of trafficking in women.

In accordance with the Plan, the measures listed above are to be undertaken by the Ministries of Internal Affairs and the Refugees and Accommodation, as well as, by the Prosecutor's Office of Georgia. The Parliament of Georgia and NGOs also play important role in this matter.

Recently, the NGO "WomenAid-Georgia" (local branch of "WomenAid-International", London) has initiated multi-media anti-trafficking campaign "Be smart/Be safe!» within the framework of which the NGO is going to implement projects aimed at raising awareness in trafficking-related matters both in governmental bodies and in public, arranging information campaigns, etc. The State agencies endeavor to co-operate with "WomenAid-Georgia" in achieving of these goals. Several meetings with participation of various governmental bodies concerned, local and international NGOs have already been held, in order to identify the most important fields of future work.

No practices of such kind as obscene phone calls/telephone sex or female genital mutilation have been known or reported in Georgia.

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UNITED
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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 10

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to food

Report on the Third Expert Consultation on the Right to Food

Chairman-Rapporteur: Mr. Asbjørn Eide

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GE.01-12339 (E)

I. INTRODUCTION

1. The present report is submitted in accordance with paragraph 9 of Commission on Human Rights resolution 2000/10, in which the Commission recommended that the High Commissioner for Human Rights "organize a third expert consultation on the right to food, following those held in 1997 and 1998, this time with a focus on implementation mechanisms at country level, inviting experts from all regions to share their experience".

2. The consultation was organized by the Office of the High Commissioner for Human Rights and hosted by the Government of the Federal Republic of Germany in Bonn from 12 to 14 March 2001. The overall objective was to exchange national experiences and to advance the understanding of the operationalization of the right to food, as part of a rights-based development policy.

3. More specifically, the task set was to examine specific country experiences in implementation of General Comment No. 12 on the right to adequate food (article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR))[1], adopted by the Committee on Economic, Social and Cultural Rights[2] on 12 May 1999. In particular, the consultation explored rights-based policy formulation and programming for food and nutrition security, national legal instruments and institutions, as well as the justiciability of the right to food and related rights. It also focused on the monitoring role of national human rights commissions, ombudsmen and related institutions.

4. Forty-seven participants attended the meeting, including experts from developing countries of all regions; representatives of national human rights commissions; representatives of United Nations bodies and specialized agencies; and the United Nations Special Rapporteur on the right to food. The Deputy High Commissioner for Human Rights participated on behalf of the High Commissioner. A full list of participants may be found in the annex. Mr. E. Riedel, Mr. A. Eide and Ms. C. McClain were elected Chairpersons, respectively, for each session of the meeting. Mr. Eide was also elected as Rapporteur.

II. SUMMARY OF PRESENTATIONS AND DISCUSSION

5. Mr. Eide reviewed the issues to be addressed by the consultation. He pointed out that the main task was to advance the understanding of ways in which Governments, in cooperation with civil society, could implement the right to food drawing on General Comment 12 which called upon States to elaborate a strategy and then to take concrete, meaningful steps towards the realization for everyone within their territory of freedom from hunger and the right to adequate food. Such a strategy required detailed and exact knowledge about the situation of the different groups in society, in order to know precisely who among them was food insecure and vulnerable to lack of adequate food and therefore required special attention.

6. He reminded the participants that the strategy preferably should make use of national framework legislation clarifying the contents of the right, the benchmarks for its realization, the institutional responsibility for advancing the right to food and the mechanisms for monitoring compliance with the benchmarks set up. How this should be done should be a primary concern

during the consultation. He noted that while it was important to explore the content and nature of international obligations related to the right to food, this issue would hopefully be further explored in a subsequent consultation.

7. Country presentations reviewed the present situation and the future prospects concerning the national implementation of the right to food in the following countries: Brazil, Colombia, El Salvador, Mali, Mexico, Mozambique, Nepal, Norway, Philippines, Romania, South Africa, Uganda, Zambia and Zimbabwe. These and other presentations made during the consultation will be the subject of a narrative report of the consultation to be posted in the OHCHR Web site.

8. Greatly facilitated by the country presentations, the general discussion focused on strategies for implementation. Participants proposed that the right to food should be inserted into the growing framework of poverty reduction strategies, which to succeed would need a human rights perspective and to identify the reasons why some people were poorer than others. It was not only a question of low income but also of "wrong" processes of development.

9. There was need to examine how human rights criteria could supplement income-based poverty definitions. Other strategies would review macro-economic reform processes in many countries and make transparent their impact on the enjoyment of the right to food.

10. A common concern was the lack of understanding and thus recognition of economic, social and cultural rights among parliamentarians, government officials and the judiciary. Awareness-raising and capacity development were needed through legislation, within national administrations, and in ombudsmen and national human rights institutions, on how to address economic, social and cultural rights, particularly the right to food, in their daily work. Opinion leaders could change levels of general awareness; it was recalled that the right to be free from torture also took a long time to be recognized. Accountability must be given increasing attention.

11. The consultation reviewed international mechanisms aimed at monitoring national implementation of the right to food. They included the States' reporting practice to the United Nations human rights treaty bodies; the Special Rapporteur of the Commission on Human Rights on the right to food; the draft optional protocol to the ICESCR to enable the CESCR to receive individual complaints; and the "International Code of Conduct on the human right to adequate food" which had been adopted by a large number of non-governmental organizations.

12. Participants recommended that national seminars be held to spell out immediate implementation tasks as well as to discuss more systematically framework legislation and plans of action.

13. In conclusion, Mr. Eide reviewed the very constructive and creative discussions and presented draft conclusions and recommendations which the participants discussed and endorsed.

III. CONCLUSIONS

14. The implementation of the right to adequate food [3] at the national and international levels should be guided by General Comment 12 on the right to adequate food adopted by the CESCR on 12 May 1999, which was an authoritative legal interpretation clarifying the normative content of the right and the respective State obligations.

15. Poverty eradication and the implementation of human rights were not separate and independent fields of activity, but were interrelated. The debate on poverty reduction should be guided by the strategies for implementation of the right to food and other human rights.

16. Economic growth did not in itself guarantee adequate food availability and access, unless there was an equitable distribution of the benefits of growth. In order to ensure freedom from hunger and malnutrition, the progressive realization of the right to food and other human rights must guide the development activities of individual States. The main problem was generally not the lack of food but the absence of effective entitlements by all to food or productive resources.

17. Economic and physical access to food was crucial, especially for vulnerable and disadvantaged groups. Special efforts must be made to protect households or groups that were unable to cope on their own, such as elderly people, those who were terminally ill, or other disadvantaged groups or individuals. Measures must be taken to ensure the enjoyment of the right to food by persons, households and communities affected by the HIV/AIDS epidemic.

18. The right to food and other social, economic and cultural rights were as "genuine" as human rights as were civil and political rights[4]. The 1993 Vienna Declaration and Programme of Action, which was adopted by consensus, stated in its Part I, paragraph 5 that "[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis".

19. The right to food should be seen not only in the context of State obligations but also take into account the responsibilities of different actors (parents, family group, the local community, private corporations and international actors). The concrete implementation of these different responsibilities should be facilitated and enforced by national Governments.

20. Prerequisites for implementing the right to adequate food should include: (a) political will; (b) organizational and managerial capacity; and (c) the allocation and appropriate use of adequate resources.

IV. RECOMMENDATIONS

A. General

21. The expert consultation recommended that education and information on the right to food and other economic, social and cultural rights be intensified. Knowledge of the scope and content of these rights should be enhanced among civil society, national human rights

institutions, human rights commissions, parliamentarians, judges, advocates, educators, administrators, etc. Education on the right to food should draw extensively on General Comment 12.

B. National implementation

22. The expert consultation recommended new and stronger measures at the national level to increase the accountability of States through a multi-pronged strategy for national implementation, as set out in General Comment 12. The strategy should make an inventory or checklist of issue areas which needed national regulation through legislation and other measures. The most appropriate ways and means would vary significantly from one State party to another, though some features would be common to many, such as guaranteeing access to productive resources for the food-insecure and the vulnerable, including land tenure and access to water.

23. The elaboration of the strategy should start with a careful auditing of existing national legislation, policy and administrative measures and available recourse procedures, followed by the adoption of an administrative agenda for change and amendment. It should include the development of indicators and benchmarks to facilitate and measure the implementation of the right to adequate food.

24. A review should be made of existing impediments to the full implementation of the right to adequate food, including

(a) A review of existing legislation to determine whether it was adequate and covered the needs and problems of all vulnerable groups for the enjoyment of the right to adequate food[5], whether there was anything within existing legislation which contradicted the obligations under the right to adequate food, and whether there were internal contradictions among the laws with negative consequences for the implementation of the right to food;

(b) A determination of whether existing legislation lacked adequate implementation and the reasons therefor;

(c) An analysis of existing legal and other recourse procedures to determine whether effective remedies existed for everyone whose right to food was violated or neglected, including ombudsmen systems (defensor del pueblo, human rights commissions and others) as well as effective administrative and judicial remedies and recourse procedures.

25. Based on the findings of the review set out above, States should develop a legislative agenda to strengthen the implementation of the right to adequate food. They should repeal or change laws incompatible with the right to food and make the necessary changes in the implementation policies and in the existing recourse procedures, taking into account the weaknesses revealed by the review.

26. In pursuit of their legislative agenda for implementation of the right to food, States should consider the adoption of a framework law or constitutional provision in line with paragraph 29 of General Comment 12 containing the basic commitment of the State to implement the right to adequate food, the recognition and precise description of the content of

the right to food, and the State obligations in that regard. The framework law should include provisions on its purpose, the targets or goals to be achieved and the time-frame for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society, the private sector and international organizations; institutional responsibilities for the process; and the national mechanisms for its monitoring.

27. The legislative agenda should contain the basic commitment of States to educate and inform their residents of their rights and responsibilities and ensure greater publicity at the national level, greater awareness and better monitoring.

28. Stronger involvement of local governments in implementation of the right to food was recommended. These were key institutions for delivery of services and reaching food-insecure population groups. Decentralization meant allocation of responsibility and budgets to local authorities, in accordance with the subsidiarity principle, while taking into account the continuous obligation of the State to ensure for all residents the enjoyment of all human rights.

29. Setting up focal points for the right to food in national administrations could play a catalytic role. Such focal points should not limit their range to a particular institution (e.g. Ministry of Agriculture), but extend their operations to all relevant sections of the Government, in particular the Ministries of Finance, Social Welfare, Health and Land.

30. Ombudsmen, human rights commissions and similar national institutions could make effective contributions to protect and promote the right to food, including its implementation and supervision, provided that they are given the necessary resources, independence and scope of action. They were needed for processing complaints and seeking remedies. The absence of an appropriate national legal framework, the lack of resources and/or lack of independence could severely reduce their effectiveness.

31. States should develop indicators and set benchmarks, as provided for in paragraph 29 of General Comment 12. The indicators and benchmarks would allow verification of the progress of establishing the right to food at country level. It might also be useful to draw up a list of categories of potential violations of the right to food, reflecting the special features of the country concerned, in order to anticipate and thereby avoid such violations. It could help to identify the shortcomings in implementation.

32. As recommended in Objective 7.4 of the 1996 Rome Declaration and Plan of Action on World Food Security, States shall favourably consider the formulation of voluntary guidelines for food security for all (para. (e) in fine). In this connection, a broad coalition of non-governmental organizations adopted an "International Code of Conduct on the right to adequate food". Such a code could be a powerful instrument not only to improve national implementation, but also to address the responsibilities of actors other than States in the implementation of the right to food. The code should be further developed by FAO and OHCHR, in collaboration with other relevant agencies and inter-agency arrangements. The occasion of the "Rome plus five" Summit in November 2001 would offer an opportunity to start such a process.

33. There was still limited information available on the prevailing situation concerning the right to food, since reporting by States to the human rights treaty bodies was often insufficient to determine the main obstacles and possible solutions. The parallel reporting by non-governmental organizations and civil society organizations was generally a valuable additional source of information. In particular, joint efforts in the form of "composite reports", which were compiled by a larger number of organizations, provided credible sources of additional information.

34. Increased use could be made of national seminars and workshops on the implementation of economic, social and cultural rights in general and the right to adequate food in particular. Participation by members of the CESCR and other international experts would be useful. Such seminars could be funded by donor and/or host countries, and could be organized in cooperation with OHCHR and civil society groups. Regional seminars could also be organized, involving the existing regional organizations or networks.

C. International implementation

35. It was recommended that CESCR reformulate its current guidelines for States reporting on article 11 of the ICESCR, taking into account General Comment 12. Moreover, in doing so CESCR should try to solicit and make use of proposals from national human rights organizations and intergovernmental and non-governmental organizations.

36. OHCHR, in cooperation with FAO and other relevant agencies, was encouraged to conduct two new studies, one consisting of a collection of ideas and best practices in the national implementation of the right to food, drawing on available literature and work of civil society organizations; the other on elements and models for national framework legislation.

37. The expert consultation recommended that CESCR, in a general comment or statement, further clarify the obligations of immediate application and those related to progressive realization as set in article 2, paragraph 1, of ICESCR, taking into account the work already done in General Comment 3 (1990), paragraph 9, which was drawn up by the Constitutional Court of South Africa in its decision on the Grootboom case (2000) (para. 45).

38. Further expert consultations on the right to food were recommended in three main areas, namely: (a) the international obligations and implementation under ICESCR, in particular with respect to the right to food; (b) ways and means to integrate the right to food into poverty-related policies, strategies and programmes; and (c) the role of national institutions in monitoring the implementation and progressive realization of the right to food.

39. The expert consultation recommended that national and international organizations, including FAO, WFP and others, as well as the bilateral and multilateral development cooperation agencies, adopt a rights-based approach in their work of implementing the right to food as set out in paragraphs 40 and 41 of General Comment 12.

40. The human rights approach to food had the potential to create awareness that the rigid self-help orientation of mainstream development philosophy, including structural adjustment programmes (SAPs), could violate human rights by excluding many of the "poorest of the poor" households from access to minimum food requirements.

41. The fulfilment of the right to food, like all human rights, was closely linked to appropriate economic, environmental and social policies and in particular the efforts towards eradication of poverty. It was crucial that the right to food be adequately reflected in poverty-related policies and programmes, and be used as the guiding principle within the preparation of Poverty Reduction Strategy Papers (PRSPs).

42. Food-related national plans or strategies like SAPs, Sector Investment Programmes and PRSPs, to which many States were already bound, must integrate economic, social and cultural rights, and particularly the right to food, as guiding principles. General education, awareness creation and lobbying efforts were required to establish the right to food in the mindset of decision-makers and affected population groups. Specific efforts should be made to include the right to food approach in ongoing national reform processes. Such processes of change provided a platform for reaching out to various groups of stakeholders (in a given sector) through national consultations and influencing policy formulation.

43. SAPs and economic reform processes in general should be reviewed with respect to their impact on the enjoyment of the right to food. There were strong indications, and in some cases also concrete evidence, that these programmes increased economic and social disparities, at least in the short run. In many countries, particularly developing countries, market forces were not a sufficient guarantee of the delivery of crucial services, especially in remote areas and to marginalized groups. This had seriously impacted on the welfare of large parts of populations. Specific measures needed to be developed to ensure that adverse effects of such programmes were addressed and that the right to food was not violated.

44. The unsustainable external debt burden of many developing countries, in particular those that met the criteria of the Heavily Indebted Poor Countries (HIPC) initiative, often limited States' capacities to implement their human rights obligations with respect to economic, social and cultural rights. There was an urgent need to reduce substantially the foreign debt burden within the overall framework of the United Nations system to combat poverty and to enable States to comply with their human rights obligations. States were encouraged to mention limitations to their capacity to implement their obligations owing to the foreign debt burden when they reported to CESCR.

45. Food embargoes or similar measures endangering the enjoyment of the right to food must be avoided in all circumstances. Other economic sanctions would also in most cases have a deleterious effect on the enjoyment of the right to food. Careful attention should therefore be given to General Comment 8 (1997) adopted by CESCR on the relationship between economic sanctions and respect for economic, social and cultural rights.

Notes

[1] See E/C.12/1999/5 of 12 May 1999.

[2] Hereafter: CESCR

[3] The consultation understood that the ultimate objective of the right to adequate food was to achieve nutritional well-being. Nutritional well-being was dependent on parallel measures in the fields of education, health and care. In the broader sense, the right to adequate food was to be understood as the right to adequate food and nutrition.

[4] In the past there had been resistance from all parts of the world to the recognition of many of the rights included in the Universal Declaration of Human Rights. While, by way of example, it was now generally recognized that everyone had a right to be free from torture and cruel and inhuman treatment, one needed only to go back some 30-40 years to find authorities in the West, as well as elsewhere, who justified torture and severe maltreatment as a legitimate ultimate measure to extract sensitive information.

[5] For example, it should be determined whether the International Code of Marketing Breast-Milk Substitutes and subsequent World Health Organization resolutions had been implemented.

Annex

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* As a consultant, Mr. Kracht was actively involved in the organization of the consultation. However, an unfortunate accident prevented him from participating in the meeting.

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda items 6, 9 and 11

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS

Letter dated 30 March 2001 from the Permanent Representative of China to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

During this fifty-seventh session of the Commission on Human Rights, the Chinese delegation noticed that some non-governmental organizations have distributed documents related to the Tibetan Autonomous Region of China and have made groundless accusations against the Chinese Government.

In order to clarify the matter, I am forwarding to you herewith the position paper* of the Chinese Government on the Tibetan Autonomous Region and request that it be circulated as an official document under agenda items 6, 9 and 11 of the current session of the Commission.

(Signed): QIAO Zonghuai
Ambassador
Permanent Representative

* Reproduced as received, in Chinese and English only.

Annex

The Position Paper of the Chinese Government on Tibet

Tibet is an inalienable part of China. From the 13th Century up until now, the Chinese government has been exercising effective jurisdiction over Tibet for more than 700 years. After the founding of the People's Republic of China, especially after the Democratic Reform and the abolition of serfdom in this region, world-shaking changes have occurred in social development and human rights situation in Tibet.

I. Guaranteeing Civil and Political Rights

People of the Tibet Autonomous Region enjoy all rights of citizens and political rights as stated in the Constitution and are entitled to all special rights of regional autonomy of ethnic minorities.

Tibet practices regional autonomy in accordance with the Constitution of the People's Republic of China. At the provincial level, the Tibet Autonomous Region not only enjoys the right to formulate local regulations, but is entitled to make decisions on local affairs and promulgate regulations governing the exercise of autonomy and specific issues, in accordance with local political, economic and cultural characteristics. In Tibet, all citizens who have reached the age of 18 have the right to vote and to stand for election. In the present National People's Congress, 20 deputies come from the Tibet Autonomous Region, 80 percent of whom are of Tibetan nationality and other ethnic minorities.

The religious freedom of the Tibetan people is respected and protected, the Tibetan people now enjoy full freedom to participate in normal religious activities. Almost every religious family has a small sutra recitation hall or a niche for a Buddhist statue. More than 1 million worshipers make the pilgrimage to Lhasa each year. In recent years, the Chinese central government has allocated a huge sum of capital and large quantities of materials such as gold and silver for the repair and maintenance of Tibet's lamaseries. For the renovation of the Potala Palace alone, the central government allotted more than 55 million yuan (US$9.63 million) during a five-year period, the largest and most expensive renovation project for the palace in hundreds of years. To date, more than

1,400 religious centers have been renovated and opened to the public, meeting the needs of the religious people for their normal religious life.

The Tibetan nationality's freedom to use and develop their own language has been effectively protected, and Tibetan is the common language of the entire autonomous region. Today, all laws, regulations, regulations and decrees adopted by the People's Congress of the Tibet Autonomous Region and all formal documents and notices issued by the autonomous regional government are promulgated in both Tibetan and Chinese. Speakers of different languages are treated equally in the recruitment of workers, cadres and students, with priority given to Tibetans.

II. Improvement of Economic, social and Cultural Rights

Since the implementation of the Democratic Reform, the Tibetan people, with the support of the central government and people all over China, have been making every effort to develop their economic, social and cultural lives. Tibet has witnessed fundamental changes in its overall social outlook while the enjoyment of economic, social and cultural rights by the Tibetan people has been substantially improved.

The central government has always instituted preferential policies to encourage Tibet's social and economic development. It has allocated large sums of capital and provided support in technology and professionals. In the past few years, the central government has allocated over 1.2 billion yuan (US$144 million) in financial subsidies to Tibet each year. The per capita disposable income of urban residents in Tibet is higher than the country's average, the basic need of food and clothing of the majority of farmers and herdsmen has been met.

The living standard of the Tibetan people has been greatly improved now. The Tibetan population has increased rapidly. To date, the total population in Tibet is more than 2.4 million, more than double the figure of 1 million in 1950. The population of Tibetans has made up of more than 95 percent of the total population in Tibet. In recent years, the birth rate and natural population growth rate of the region are respectively much higher than the national average.

III. Benefit from the Strategy of Western Development

The Chinese Government has decided to develop west China in an unprecedented large scale, shifting the focus of economic construction from the eastern parts of the country to the west in order to narrow the gap. This strategic adjustment aims to build the vast, remote western region into a beautiful land, where people live in harmony with nature, by providing enormous investments and policy guidance.

This strategy will have a historic influence to the western region, including Tibet. The huge investment by the central government will speed up the development of basic industries and infrastructures, science and technology, education and culture in the western region, and will improve the ecology and environment there. With a view to implement the strategy, the central government will accelerate the construction of water conservancy projects, transportation networks and communications facilities, as well as the highways and railways to smooth the transportation between the provinces in the region and link the region with other parts of the country. New airports and natural gas pipeline projects will also be built. These projects will give Tibet a golden opportunity to promote its economic and social development, and will also help the Tibetans to improve their living standard. On the other hand, the implementation of the strategy of Western Development will be conducive to strengthen the connection between the central government and the local governments, eastern region and western region, the Han nationality and minority nationalities, including Tibetan nationality. It will also be conducive to the common prosperity and development of all nations of China.

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COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Letter dated 26 March 2001 from the Permanent Representative of Kuwait to the United Nations Office at Geneva addressed to the Chairperson of the Commission on Human Rights

According to the instructions of the Government of the State of Kuwait, I have the honour to transmit the response of my Government to the letter dated 4 December 2000 addressed to the Office of the High Commissioner for Human Rights from the Permanent Representative of Iraq, in which the latter responds to the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, as contained in document A/55/294.

The response of my Government addresses the items concerning the Kuwaiti prisoners of war and Iraqi missing persons, as contained in document A/C.3/55/5 dated 6 November 2000.

I should be grateful if you would have this letter and its annex* circulated as a document of the fifth-seventh session of the Commission on Human Rights.

(Signed): Dharar A.R. RAZZOOQI
Ambassador
Permanent Representative

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* Reproduced as received, in Arabic and English only.

Annex

On 2 August 1990, the Iraqi armed forces carried out their iniquitous invasion of the territory of the State of Kuwait in an act of aggression that was unparalleled in the history of mankind and constituted one of the most odious crimes and grave violations of human rights and fundamental freedoms documented in official and unofficial reports in past centuries, particularly in the light of the observations of the Special Rapporteur on the situation of human rights in Kuwait under Iraqi occupation, as contained in document E/CN.4/1992/26. These violations continued for a period of seven months.

In a flagrant violation of the Geneva Conventions, the Iraqi forces, constituting the "Occupying Power", prevented the International Committee of the Red Cross and other humanitarian organizations concerned from entering the State of Kuwait during the period of the occupation in order to cover up the barbaric acts that the invading Iraqi forces were committing, including the murder of innocent civilians, the displacement of foreign residents and the expulsion of citizens and residents from their homes so that the latter could be used for military purposes, as well as the theft and pillage of State property and property owned by citizens and residents, the commission of acts of aggression against diplomatic missions in Kuwait, arbitrary and summary executions, torture, arbitrary arrests and detentions and the transfer of detainees to detention centres in Iraq from which a number of them were not released after the liberation of Kuwait.

In view of the serious threat that these violations posed to innocent civilians, the United Nations Security Council adopted a number of resolutions under the terms of Chapter VII of the Charter of the United Nations. Some of these resolutions, such as 686 (1991), 687 (1991), 706 (1991) and 1284 (1999), focused on the question of prisoners and called upon Iraq to, inter alia:

- Immediately release under the auspices of the International Committee of the Red Cross, Red Cross Societies or Red Crescent Societies all Kuwaiti and third-State nationals detained by Iraq and return the remains of any deceased Kuwaiti and third-State nationals so detained.
- Arrange for immediate access to and release of all prisoners of war under the auspices of the International Committee of the Red Cross and return the remains of any deceased personnel of the forces of Kuwait and the Member States cooperating with Kuwait.
- Extend all necessary cooperation to the International Committee of the Red Cross by providing lists of such persons, facilitating the access of the International Committee to all such persons wherever located or detained and facilitating the search by the International Committee for those Kuwaiti and third-State nationals still unaccounted for.

On 28 February 1991, after the expulsion of the invading Iraqi forces by the forces cooperating in the liberation of the territory of Kuwait, the International Committee of the Red Cross and other humanitarian organizations were permitted to enter the State of Kuwait to discharge their humanitarian functions. In accordance with Security Council resolution 686 of 2 March 1991, a Special Commission was formed under the auspices of the International Committee of the Red Cross to ensure the rapid repatriation of prisoners on both sides. That Commission, which was initially known as the "Riyadh Commission", is currently known as the Tripartite Commission since its members are from the Coalition States (France, Kuwait, the Kingdom of Saudi Arabia, the United Kingdom and the United States of America), Iraq and the International Committee of the Red Cross, by which it is chaired.

Although the Riyadh meetings held in March 1991 led to the handover of a number of prisoners on both sides to the International Committee of the Red Cross, many families reported that their prisoners had not been returned. Accordingly, a specific plan of action was formulated on 12 April 1991 for the tracing and repatriation of civilian prisoners and missing persons and the return of the remains of prisoners who were believed to have been killed during the occupation.

The Kuwaiti authorities focused their endeavours on the compilation of documented and substantiated individual files in accordance with the above-mentioned plan. However, Iraq obstructed the work of the Tripartite Commission by boycotting its meetings for more than two full years (from the end of 1991 to mid-1994).

When Iraq resumed its participation in the meetings of the Tripartite Commission in July 1994, Kuwait had already submitted more than 600 individual files since the beginning of 1993, most of which were supported by the testimonies of numerous eyewitnesses and official arrest records. These complete files that the Government of the State of Kuwait submitted to the Tripartite Commission were commended by the International Committee of the Red Cross and by international officials such as Mr. Walter Kalin, the Special Rapporteur on the situation of human rights in Kuwait under Iraqi occupation, Mr. Van der Stoel, the former Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, the present Special Rapporteur on the situation of human rights in Iraq, and Ambassador Yuli Vorontsov, the High-Level Coordinator appointed by the Secretary-General of the United Nations.

Of the individual files submitted by the State of Kuwait, 35 concerned nationals of third States (India, Bahrain, the Sultanate of Oman, Lebanon, Syria, Egypt, Iran and Saudi Arabia).

In December 1994, the Tripartite Commission established a Technical Subcommittee to speed up the examination of the files and, if necessary, hear eyewitnesses. This Subcommittee held 36 meetings, mostly on the border between Iraq and Kuwait, and the Tripartite Commission held 21 meetings in Geneva. Hence, Iraq participated in a total of 57 meetings under the auspices of the International Committee of the Red Cross on the issue of prisoners.

During these meetings, Iraq acknowledged 126 of the files submitted by the Government of the State of Kuwait. However, instead of responding by clarifying the fate of the prisoners, it merely provided general replies, even though those files were supported by testimony and evidence proving that the Iraqi authorities had detained those prisoners. The International Committee of the Red Cross designated these as "preliminary replies".

After studying the complete and documented files submitted by the Government of the State of Kuwait and the replies submitted by Iraq, Mr. Andreas Mavrommatis, the Special Rapporteur, stated in his report to this fifty-seventh session of the Commission on Human Rights

that the information which the Government of the State of Kuwait had gathered, and which included some comparative studies and documents, confirmed that the Government of Iraq was in a position to clarify the fate and/or whereabouts of the Kuwaiti prisoners.

Unfortunately, all the meetings of the Tripartite Commission and the Technical Subcommittee have so far failed to achieve the desired results, since the fate of 605 Kuwaiti and third-State prisoners were not clarified by the replies of the Iraqi regime which, at the end of 1998, once again boycotted the work of the Tripartite Commission and its Technical Subcommittee for purely political reasons.

In spite of Iraq's boycott of the work of the Tripartite Commission and its refusal to cooperate with the Special Rapporteur on the situation of human rights in Iraq and the Coordinator of the Secretary-General of the United Nations for matters relating to the return of Kuwaiti property and the repatriation of all Kuwaiti and third-State nationals or their remains, the Government of Kuwait has diligently supported those channels, which were established to determine the fate of those prisoners and alleviate the suffering of their families and loved ones.

Since Iraq's boycott of the work of the Tripartite Commission and its Technical Subcommittee in December 1998, the Coalition members of the Tripartite Commission have continued to hold periodic meetings with the International Committee of the Red Cross, the most recent of which was the seventh consultative meeting held in Geneva on 15 March 2001 at which the Coalition States informed the International Committee of the Red Cross of their desire to hold a meeting of the Tripartite Commission on 19 July 2001 and stressed the importance of persuading Iraq to participate in that meeting.

The State of Kuwait's first and only concern is of a humanitarian nature, namely to secure the release of the prisoners as soon as possible in order to relieve the anguish of their families.

In contrast, Iraq is doing its utmost to politicize this issue in the hope of finding a pretext to evade its international obligations, which are absolutely clear.

This was confirmed by the current Special Rapporteur on the situation of human rights in Iraq in his report submitted to the fifty-fifth session of the General Assembly of the United Nations (A/55/294), in which he stated that: "What appears to be lacking is the necessary political will on the part of the Iraqi authorities to participate in the work and to examine speedily and effectively each and every case before the Commission".

In his report, the Special Rapporteur further stated that: "Enough material was produced to support the Kuwaiti claim that the Government of Iraq is in a position to clarify the fate and/or whereabouts of Kuwaitis unaccounted for".

The Special Rapporteur also invited the Government of Iraq to resume cooperation with the Tripartite Commission and the Technical Subcommittee established to facilitate work on this humanitarian issue.

In his report to the members of the Security Council (S/2000/347), Ambassador Yuli Vorontsov, the High-Level Coordinator appointed by the Secretary-General of the United Nations in accordance with operative paragraph 14 of Security Council resolution 1284 (1999) for matters relating to the return of Kuwaiti property and the repatriation or return of all Kuwaiti and third country nationals or their remains, stated that Iraq had refused to meet and cooperate with him, had not provided any information concerning prisoners since 1998 and had been refusing to participate in the work of the Tripartite Commission since December 1998.

Ambassador Vorontsov, the Coordinator, also made it clear that Iraq's compliance with its obligations would demonstrate respect for the principles of international humanitarian law and its cooperation in putting an end to that long-standing human tragedy would not be inconsistent with Iraq's own stated assurances that it regards the problem as a humanitarian one.

The State of Kuwait is closely monitoring developments on this humanitarian issue and will continue to intensify its endeavours to settle this issue. It will never allow Iraq to evade its obligations, since the settlement of humanitarian issues is not subject to political considerations pending between Iraq and the Security Council.

In the light of the above, the Iraqi authorities are called upon to fulfil their moral and legal responsibilities by:

- Immediately revealing the names of the Kuwaiti and third-State prisoners who are still alive in order to relieve the anguish of their families, since it is well known that a feeling of uncertainty concerning the fate of loved ones causes unbearable grief and suffering.
- Permitting humanitarian organizations, such as the International Committee of the Red Cross, to visit the living prisoners and furnishing proof of the death of the others,

- Beginning to deal, in a prompt and diligent manner, with all the cases and files submitted by the State of Kuwait, bearing in mind the fact that eight years have passed since they were officially submitted. Iraq should also expedite the tracing process and submit all the available information without further procrastination or delay.
- Permitting the International Committee of the Red Cross to discharge its functions in Iraqi prisons and other places of detention in conformity with the Geneva Conventions and the working methods applied by that organization.

With regard to the question of missing Iraqis, the Security Council resolutions made no mention of this matter since the Iraqi authorities were occupying the territory of Kuwait at the time and, consequently, the Kuwait authorities were not responsible for Iraqi missing persons. Nevertheless, on humanitarian grounds, the Government of the State of Kuwait has voluntarily expressed its willingness to cooperate in that regard under the auspices of the Tripartite Commission, the work of which Iraq is currently boycotting, thereby confirming Iraq's lack of serious interest in this humanitarian issue.

In his report submitted to the Security Council (S/2000/1997), the High-Level Coordinator appointed by the Secretary-General stated that: "As the Government of Iraq claims to seek a resolution to the issue of its own missing nationals, it is essential that it exercise an appropriate and sensitive understanding of the position held by the Government of Kuwait and other countries concerned. Above all, the suffering of detained and missing persons and their families finally deserves attention by the authorities in Iraq".

The Government of the State of Kuwait has undertaken to cooperate fully with the Special Rapporteur on the situation of human rights in Iraq with a view to settling this issue by allowing him to visit Kuwaiti places of detention at any time and without any restrictions. This undertaking was honoured when his assistant requested permission to make an unannounced inspection of places of detention and prisons during his visit to the State of Kuwait in July 2000.

In conclusion, the international community is called upon to intensify its endeavours to find ways to settle this humanitarian issue, which has been prolonged as a result of Iraq's persistent evasion of its legal and humanitarian obligations.

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Fifty-seventh session
Agenda item 13

RIGHTS OF THE CHILD

Letter dated 2 April 2001 from the Permanent Representative of Viet Nam to the United Nations Office at Geneva addressed to the Chairperson of the Commission on Human Rights

Upon instruction of my Government, I have the honour to transmit to you herewith the joint letter of appeal for contribution and support to disabled children, especially child victims of Agent Orange in Vietnam, signed by H.E. Mrs. Nguyen Thi Binh, Vice-President of the Socialist Republic of Vietnam on behalf of the National Fund for Vietnamese Children - Agent Orange Victim Fund - Vietnam Save Disabled Children.*

I would be grateful if you could circulate this letter as an official document of the fifty-seventh session of the Commission on Human Rights under agenda item 13.

Signed: NGUYEN Quy Binh
Ambassador
Permanent Representative

* Reproduced as received, in the language of submission only.

Annex

LETTER TO CALL ON CONTRIBUTIONS FOR DISABLED CHILDREN, ESPECIALLY CHILD VICTIMS OF AGENT ORANGE IN VIETNAM

Dear compatriots and friends!

Children are the family's happiness and the country's future. The Vietnamese family, as any family over the world, wishes to have healthy children who will be cared for and have access to education. Children themselves have a very simple desire of going to school and enjoying entertainment with their peers, as well as a wish to become adults in order to show their thanks to parents and contribute their part to the country's construction.

But a heart-rending fact is that at present there are millions of orphans, disabled and displaced street children. Of these, thousands of children are disabled due to deformities from Agent Orange, mines and bombs after the war. This is an endless pain, because of the fact that the war has ended over 25 years ago. These children are innocent victims, who have to suffer from physical and spiritual pains everyday, every hour and even being disabled for their whole life.

What can we do so that these children can be treated, especially those with Agent Orange deformities? What must we do for their families? These questions are always on our minds.

During the past, the State of Vietnam, the Vietnamese people and foreign friends, as well NGOs, have set forth many policies and implemented many activities concerning the care and support for these children and their families. But in fact the achievements are still very limited. Therefore, we would like to call upon:

1. Social - Political organizations, economic enterprises, communities, and overseas Vietnamese, including children and their organizations, by appropriate actions and with appropriate capability, to provide material contributions, to take care of, as well as to encourage these disabled children, especially those who are victims of Agent Orange.

2. International organizations and individuals to assist in programs for caring and rehabilitating the disabled children, to help families of disabled children, to support us in cleaning areas with Agent Orange and to assist us in de-mining unexploded bombs and mines. The support from you and people of good conscience all over the world would help to reduce the pain of the war, in order to put aside the past and look at a peaceful future for coordination and development, as well as protecting children's rights and human rights.

It is our hope that many national and international organizations and individuals will respond and provide appropriate support for the best sucess of this campaign for disabled children in general and in particular, children of Agent Orange in Vietnam. The disabled children and children suffering from Agent Orange are waiting for your support.

We would like to thank you all.

Hanoi, 22 March 2001

On behalf of : **National Fund for Vietnamese Children**
Agent Orange Victim Fund
Vietnam Save Disabled Children